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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 483.

THE STATE OF LOUISIANA *EX RELATIONE* THE CITIZENS' BANK OF LOUISIANA, PLAINTIFF IN ERROR,

vs.

THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS, THE CITY OF NEW ORLEANS, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED APRIL 10, 1896.

(16,248.)

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a No. 11861.

Supreme Court of Louisiana.

Filed May 22nd, 1895. (Signed) Paul E. Mortimer, deputy clerk.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Civil District Court for the Parish of Orleans.

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA
vs.
BOARD OF ASSESSORS *et als.*
No. 44806. Division "D."

Messrs. Henry Denis and Bramch K. Miller, attorneys for relator and appellee.

Messrs. M. J. Cunningham and R. Lyons, attorneys for respondents and appellants.

H. L. Dufour, Esq., attorney for the City of New Orleans.

Transcript of proceedings had in the civil district court for the parish of Orleans and in the supreme court of the State of Louisiana.

1 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Civil District Court for the Parish of Orleans.

Petition, Affidavit, & Order.

Filed January 10th, 1895.

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA
vs.
BOARD OF ASSESSORS *et als.*
No. 44806. Civil District Court, Division "E."

To the honorable the civil district court for the parish of Orleans:

The petition of the State of Louisiana on the relation of the Citizens' Bank of Louisiana, a corporation erected by law and established in the city of New Orleans, respectfully represents that under the provisions of the charter of the said Citizens' Bank of Louisiana, as contained in an act of the General Assembly of the 1st of April, 1833, and in an act of the General Assembly of the 30th of January, 1836, the capital, profits, and property of the said corporation are exempted from any tax laid by the State or by any parish or body politic under the authority of the State during the continuance of the said charter.

That said exemption was not granted gratuitously, but was based

upon and granted for a valuable consideration, to wit, a share
2 and interest in the profits of said Citizens' bank, which the State of Louisiana stipulated for herself by section 4 of the act of the 30th of January, 1836.

That the exemption, therefore, constituted a contract between the State and this relator, which is protected from impairment by the former both by the Constitution of the United States and the constitution of Louisiana.

The relator further represents that the subscriptions of the stockholders of said corporation forming its capital stock under the provisions of its charter are not paid at the time of the subscription, but are paid later by gradual contributions called for by the board of directors; that the subscriptions and the calls for contributions are secured by special mortgage upon the property of the stockholders; that when the calls for contributions are not paid and the bank forecloses its mortgage and buys in the mortgaged property at sheriff's sale the said property replaces the subscription and becomes part of the capital of the bank and is equally exempted from taxation.

The relator now represents that the following-described property was specially mortgaged by the late Adam Thomson to secure the payment of eight hundred & fifty-four shares of the capital stock of the Citizens' Bank of Louisiana, in the purchase of which he had assumed all the obligations of a stockholder of said corporation.

That the said Thomson having defaulted in the payment of the calls for contributions on said shares of stock, the relator foreclosed its mortgage upon and bought in the mortgaged property, to wit: 1st, nine lots of ground situated in the first district of this city, in the square bounded by Commerce, Julia, Tchoupitoulas, and St. Joseph streets, measuring twenty-five feet front on Commerce street
by one hundred and thirty-two and thirty-five — feet in depth
3 respectively, together with the improvements therein; and, 2nd, one lot of ground situated in same square and measuring twenty-eight feet front on Tchoupitoulas street by eighty-seven feet in depth, together with the improvements thereon.

That said property was adjudicated to the Citizens' Bank of Louisiana on the 13th day of June, 1891, in the foreclosure of its mortgage against the succession of said Adam Thomson, and from that day became part of the capital.

And now the relator represents that, though the said property was from that time exempt from taxation, still the board of assessors have assessed it for State and city taxes for the years 1892 and 1893, notwithstanding the objection and opposition of your relator, and have caused the said assessments of the property to be recorded in the office of the recorder of mortgages in the city of New Orleans, to the great annoyance and injury of the relator.

Therefore the relator prays that the writ of mandamus may be issued in the premises, directed to the board of assessors for the parish of Orleans, to the State tax-collectors for the first district of New Orleans, to the City of New Orleans, and to the recorder of mortgages for the parish of Orleans; that in due *cause* of law there be judg-

ment in favor of the relator *describing* the aforesaid property exempt from all taxation so long as it remains the property of the Citizens' Bank of Louisiana, making the mandamus preemptory, and commanding that the said assessments for the years 1892 and 1893 be annulled and cancelled, and that the inscriptions and recording of the same at the mortgage office in the city of New Orleans be erased and cancelled; and relators pray- for general relief in the premises.

HENRY DENIS,
BRANCH K. MILLER,
Att'ys for the Relator.

4 *Affidavit.*

George William Nott, being duly sworn, deposes and says that he is the president of the Citizens' Bank of Louisiana, and that all the facts alleged in the foregoing petition are true and correct.

G. W. NOTT.

Sworn to and subscribed before me, notary, at New Orleans, Louisiana, this ninth day of January, A. D. 1895.

EDGAR GRIMA,
Notary Public.

Service accepted.
(Signed) R. H. DOWNING,
Att'y for Recorder of Mortgage.

Order.

Let alternative writs of mandamus issue as herein prayed for and according to law, returnable on Monday, the 21st day of January, 1895, at 11 o'clock a. m.

New Orleans, January 11th, 1895.
(Signed) GEO. H. THEARD, *Judge.*

Order of Judge Recusing Himself.

Being a stockholder of the Citizens' bank, I hereby recuse myself in this case.

New Orleans, 21st January, 1895.
(Signed) GEO. H. THEARD, *Judge.*

Plea of Res Judicata & Order.

Filed February 4th, 1895.

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA
—
THE BOARD OF ASSESSORS *et als.*
} No. 44806. Civil District Court, Division "D."

5 And now this relator, not abandoning any of the allegations of this petition, but, on the contrary, reiterating the same, presents this plea of *res judicata*, and avers—

That the issue raised in this case, to wit, the question of the exemption from all taxation of the capital and property of the Citizens' Bank of Louisiana under and by virtue of its charter and laws amendatory thereof, was tried, passed upon, and decided by final judgment between the same parties to the present suit in the following cases, to wit:

1st. In the suit of The Citizens' Bank of Louisiana *vs.* L. Bouny, tax-collector, No. 7368 of the docket of the supreme court of Louisiana.

2nd. In the suit of The Citizens' Bank of Louisiana *vs.* The Board of Assessors *et als.*, No. 12429 of the civil district court of the parish of Orleans.

3rd. In the suit of The Citizens' Bank of Louisiana *vs.* The Board of Assessors *et als.*, No. 19144 of the civil district court for the parish of Orleans.

4th. In the suit of The Citizens' Bank of La. *vs.* The Board of Assessors, No. 20541 of the civil district court for the parish of Orleans.

The relator avers that in each of these four suits there was a final judgment deciding that the capital and property of the Citizens' Bank of Louisiana is exempted by its charter and the laws amendatory thereof from all taxation by either the State of Louisiana or the municipal authorities under it.

That each one of the judgments rendered in said cases constitutes *res judicata* upon the said question between the parties to the present suit. Wherefore the relator prays again for judgment as already prayed for in its petition and for general relief.

(Signed) HENRY DENIS &
BRANCH K. MILLER,
Att'ys for the Relator.

6 *Order.*

Let this plea of *res judicata* be filed as prayed for and according to law.

New Orleans, February 4th, 1895.

(Signed) N. H. RIGHTOR, *Judge.*

Return of Tax-collector.

Filed March 14th, 1895.

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA
vs.
THE BOARD OF ASSESSORS *et als.*
} No. 44806. Civil District Court, Division "D."

Now into court comes Harrison Parker, State tax-collector, and for return herein shows:

1st. That the petition herein discloses no cause of action against your respondant.

2nd. That the assessments sought to be cancelled herein are at

present in suit in the circuit court of the United States for the eastern district of Louisiana in proceedings between the parties of the suit.

3rd. That plaintiff's term of exemption granted it by the acts of 1833 and 1836 was voluntarily relinquished by the passage of act 79 of 1880 and the bank's unconditional acceptance of said act.

4th. That act 40 of 1874, by which the charter of the bank was extended, was unconstitutional to the extent that the legislature which passed said act was *cerated* by the constitution of 1868, and that article 118 of that constitution provided that the legislature should have power only to exempt from taxation property actually used for school, church, and charitable purposes.

5th. That even if the passage and acceptance of act 79 of 1880 did not operate as a relinquishment of the bank's exemption
7 from taxation the fifty years' exemption granted by the legislature of 1833 and 1836 expired in 1886, as the extension of charter granted by the act 40 of 1874 could not extend the exemption from taxation, as said exemption was prohibited by the constitution of 1868.

6th. Respondant further shows that the real estate herein on which these assessments are sought to be cancelled is not a part of the capital of the banks, and is therefore not exempt from taxation, as will more fully appear by an act dated April 27th, 1881, passed before Edgar Grima, notary public.

7th. Respondant further alleges that the assessments complained of herein *is* correct and valid, and that the property herein is liable for taxation.

Wherefore respondant prays to be hence dismissed with costs and for general relief.

(Signed) R. LYONS,
Att'y State Tax-collector.

Note of Evidence. Taken in Open Court February 18th, 1895.

Present: Honorable Geo. H. Theard, judge.
Filed March 14th, 1895.

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA
vs.
BOARD OF ASSESSORS *et als.*
} No. 44806. Civil District Court, Division "D."

Present: Henry Denis, for relator; Richard Lyons, for respondants; H. L. Dufour, for the City of New Orleans.

8 Mr. Denis, on behalf of relator, produces and offers in evidence:

1st. An act of legislature of the State of Louisiana of 1833, approved on the 1st of April, 1833, known as the charter of the Citizens' Bank of Louisiana.

2nd. Another act of the legislature of Louisiana, approved on the 5th of January, 1836, amendatory of the 1st act offered.

3rd. An act of legislature of the State of Louisiana of 1874, approved on the 6th of March, 1874, extending the charter of the Citizens' Bank of Louisiana.

It is agreed that the above acts may be read from the printed statutes of the State of Louisiana, and that any article of the constitution of the State of Louisiana that may be offered in evidence may be read from the printed and authorized publication of the same without being copied in the record.

Counsel for relator also produces, offers, and files in evidence the record of the suit of The Citizens' Bank of Louisiana *vs.* The Succession of Adam Thomson, # 32233 of the docket of the civil district court for the parish of Orleans.

Counsel for relator also produces and offers in evidence the sheriff's deed of the property adjudicated in said case to the Citizens' Bank of Louisiana, a copy of said deed to be filed in evidence.

Counsel for relator also produces, offers, and files in evidence the record of the suit of The Citizens' Bank of Louisiana *vs.* The Board of Assessors *et als.*, #12429 of the docket of the civil district court for the parish of Orleans.

To the introduction of the above-named records in evidence Mr. Lyons objects, on behalf of respondants, on the ground that the plea of *res judicata* should be filed by way of supplemental petition, and no copy of such supplemental petition has been served on respondants.

9 The court overrules the objection.

To which ruling of the court counsel for respondants excepts and has this note taken in lieu of a former bill of exceptions. Counsel for relator also produces, offers, and files in evidence the record of the suit of The Citizens' Bank of Louisiana *vs.* The Board of Assessors *et als*, # 19144 of the docket of the civil district court for the parish of Orleans.

Also the record of the suit of The Citizens' Bank of Louisiana *vs.* The Board of Assessors, # 20541 of the docket of the civil district court for the parish of Orleans.

Also the record # 7368 of the docket of the supreme court of Louisiana, entitled Citizens' Bank of Louisiana *vs.* L. Bouny, tax-collector.

Counsel for relator also produces, offers, and files in evidence the mortgage certificate of tax inscriptions upon the property described in relator's petition, dated the 14th of January, 1895, now marked "P. 1."

Mr. Lyons, on behalf of respondants, before any evidence has been offered on behalf of relator, objects to any and all evidence on the ground that this court is without jurisdiction, it not appearing that the amount involved is over one hundred dollars. The court rules that from the allegations in the petition it is evident that the amount involved is over one hundred dollars, and that therefore this court has jurisdiction, and the court overrules the objection.

To which ruling of the court counsel for respondants excepts and has this note taken in lieu of a former bill of exceptions. On behalf of respondants Mr. Lyons offers in evidence article 118 of the con-

stitution of the State of Louisiana of 1868 and articles 234 and 237 of the constitution of the State of Louisiana of 1879.

The court rules that it is not necessary to offer in evidence any part of the constitution or any general act of the legislature.

10 Mr. Lyons, on behalf of respondants, offers in evidence act #79 of 1880 of the legislature of the State of Louisiana.

Also records # 12112 and # — of the docket of the United States circuit court for the eastern district of Louisiana, both entitled Citizens' Bank of Louisiana *vs.* Board of Assessors.

Mortgage Certificate. Offered in Evidence by Relator, Marked Exhibit P I.

Filed March 14th, 1895.

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA *vs.* BOARD OF ASSESSORS *et als.* } No. 44806. Civil District Court, Division "D."

STATE OF LOUISIANA, PARISH OF ORLEANS, *Office of Recorder of Mortgages.*

The undersigned, recorder of mortgages for the parish of Orleans, State of Louisiana, certifies that in the records of this office there are no other mortgages standing in the name of the Citizens' Bank of Louisiana and recorded against a portion of ground, etc., in the first district, in square bounded by Tchoupitoulas, St. Joseph, Commerce, and Julia Sts., measuring as follows: 275′ 4″ 2‴ front on Commerce St.; thence 23′ 1″ 4‴ on a line running towards Tchoupitoulas St.; thence 89′ 8″ 5‴ on a line running towards St. Joseph St.; thence 122′ 6″ 5‴ front on St. Joseph St., running towards Tchoupitoulas St.; thence 148′ 3″ on a line running towards Julia St.; thence 86′ on a line running towards Tchoupitoulas St.; thence 76′ 10″ front on Tchoupitoulas St., running towards Julia St.; thence 88′ 2″ 4‴ on a line running toward Commerce St.; thence 137′ 5″ on a line running towards Julia St.; thence 132′ 5″ 1‴ to Commerce St., at the starting point; said portion of

11 ground comprises lots Nos. 2, 3, and 10 to 18, inclusive, fronting on Commerce St.; lots 2, 3, 4, 5, and 6, fronting on St. Joseph St.; lots 13, 14, and 3, fronting on Tchoupitoulas St., and lots A and O, in rear of said lots 10 to 18, inclusive, which front on Commerce St., and partly in the rear of lot- Nos. 3, 13, and 14, which front on Tchoupitoulas St.—

Than—

9, 7. The drainage privilege cancelled.

523.	13.	State	tax	1894	assessed,	$1,500.00,	lot 15.
"	"	"	"	1894	"	$15,000.00,	lots 25–33.
495.	"	"	"	1893	"	$1,500.00,	" 15.
"	"	"	"	1893	"	$15,000.00,	" 25–33.
470.	"	"	"	1892	"	$15,000.00,	" 25–33.

514.	8.	City tax	1893 assessed	$30.00,	lot 15.
22.	2.	" "	1893	$300.00,	" 25–33, in.
491.	5.	" "	1892	$30.30,	" 15.
"	"	" "	1892	$303.00,	" 25–33.

9 a. m., New Orleans, January fourteenth, 1895.

GEO. GUINAULT, *D'y R.*

Submission.

Extracts from the minutes of March 14th, 1895.

Present: Honorable N. H. Rightor, judge.

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA *vs.* BOARD OF ASSESSORS *et als.* — No. 44806. Civil District Court, Division "D."

12 This mandamus case came on today for trial, Henry Denis for bank, Branch K. Miller for plaintiff, Richard Lyons for def't. After hearing pleadings, evidence, and argument of counsel the court took the matter under consideration.

Judgment.

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA *vs.* BOARD OF ASSESSORS *et als.* — No. 44806. Civil District Court. Division "D."

In this case the law and the evidence being in favor of the relator, and for reasons orally giv*ing*, it is ordered, adjudged, and decreed that the writ of mandamus herein issued be made peremptory; that there be judgment in favor of the said relator, The Citizens' Bank of Louisiana, and against the respondants, viz., The City of New Orleans, The State Tax-collector for the First District of New Orleans, the Board of Assessors for the Parish of Orleans, and The Recorder of Mortgages for the Parish of Orleans, decreeing the property described in relator's petition to be exempt from all taxation as the property of said Citizens' bank, viz:

1st. Nine lots of ground situated in the first district of this city, in the square bounded by Commerce, Julia, Tchoupitoulas, and St. Joseph streets, measuring twenty-five feet each front — *Common* street by one hundred and thirty-two and thirty-five — feet in depth respectively; and,

2nd. One lot of ground situated in same square and measuring twenty-eight feet front on Tchoupitoulas street by eighty-seven feet in depth.

13 It is further ordered and decreed that the assessments on said property for the years 1892 and 1893 be annulled and cancelled; that the inscriptions of said assessments and of

the city and State taxes on said property for said years 1892 and 1893 be cancelled and erased from the books of the recorder of mortgages, and that the respondants pay the costs of court.

Judgment rendered March the 26th, 1895.

Judgment *rendered* April 22nd, 1895.

N. H. RIGHTOR, *Judge.*

Rule for New Trial.

Extract from the minutes of April 1st, 1895.

Present: Hon. N. H. Rightor, judge.

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA *vs.* BOARD OF ASSESSORS *et als.* } No. 44806. Civil District Court, Division "D."

On motion of Mr. Cunningham, attorney general, and R. Lyons, att'y for State tax-collector, and on suggesting to the court that the judgment herein rendered is contrary to the law and the evidence, in this, to wit:

1st. That there is no evidence in the record showing that over one hundred dollars is involved in this suit;

2nd. That the plea of *res judicata* filed herein is without application to the present case;

3rd. That the relator's right of exemption clearly expired in 1880, or, at the latest, in 1887, because the legislature of 1874 in extending the time of the charter was without power to extend the exemption from taxation, the same being prohibited by the State constitution of 1868;

4th. That the property herein assessed was not part of the
14 capital of the Citizens' Bank of Louisiana, but belonged to the holders of the mortgage bonds;

5th. That for the reasons set forth in the answer filed in this case the judgment is contrary to the law and the evidence—

It is ordered that The Citizens' Bank of Louisiana, relator herein, do show cause on Monday, the eight day of April, 1895, at 11 o'clock a. m., why a new trial should not be granted herein.

Rule for New Trial Submitted.

Extract from the minutes of April 15th, 1895.

Present: Hon. N. H. Rightor, judge.

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA *vs.* BOARD OF ASSESSORS *et als.* } No. 44806. Civil District Court, Division "D."

The rule taken herein by plaintiff on the first of April inst. for a new trial came on today for hearing—Cunningham & Lyons, for

plaintiff in rule; Henry Denis, for defendant herein. After hearing pleadings and arguments of counsel the court took the same under consideration.

Rule Dismissed.

Extract from the minutes of April 22nd, 1895.

Hon. N. H. Rightor, judge.

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA
vs.
BOARD OF ASSESSORS *et als.*
No. 44806. Civil District Court, Division "D."

15 The law and evidence being again considered and for the reasons orally assigned, it is ordered that the rule taken herein on the 1st April instant be discharged and a new trial refused.

Copy of bill; answer of board of assessors and city of New Orleans; supplemental bill; 2nd supplemental bill; demurrer and answer of city of New Orleans, and demurrer and answer of board of assessors, tax-collectors, and sheriffs of various parishes.

Filed M'ch 14, '95. Jules Vienne, d'y clerk.

U. S. Circuit Court. Eastern District of Louisiana.

THE CITIZENS' BANK OF LOUISIANA
vs.
THE BOARD OF ASSESSORS, PARISH OF ORLEANS, *et als.*
No. 12112.

To the honorable the circuit court of the United States in and for the fifth circuit and district of Louisiana:

The Citizens' Bank of Louisiana, a banking corporation created by the legislature of Louisiana, doing business in New Orleans, there domiciled, and a citizen of Louisiana, exhibits this its bill of complaint in the suit or cause of action arising under the Constitution of the United States against James A. Renshaw, Jeremiah M. Gleason, Joseph Demoruelle, Louis A. Richards, John Reaney, David Zable, Edward Thompson, Jr., constituting the board of assessors for the parish of Orleans, and against the City of New Orleans, C. H. Parker, Henry Guillotte, H. D. Monnier, and W. T. Patton, the last four named being respectively State tax-collectors for the 1st, 2nd, 3rd, and 4th districts; and thereupon your orator shows and avers—

That your orator was incorporated in 1833 in aid of the policy of the State to provide for the development of the planting in-
16 terest by creating banks with capital obtained abroad by negotiating the bonds of the State, and to be loaned in the mode hereinafter stated to planters contemplated to become stockholders in such banks, and in consideration of the organization of

your orator for this public purpose and of the credit with orator to be enjoyed by the State and of its participation in the profits anticipated from this system of banking, all secured to the State in the charter, your orator was incorporated to *be* a banking business and fulfill the object of the charter, and the State conferred upon it all the privileges and immunities essential to the corporate purpose, including the exemption of all the capital and property of orator from all taxation, State, parish, or municipal.

That the charter fixed the capital of orator at twelve million dollars in shares of one hundred dollars each, to be secured by mortgages on the property of the stockholders, and the funds procured by the negotiation of the bonds of the State were to be loaned to the stockholders on the pledge only of their stock not paid for, but secured by said mortgages, and the loans were payable in installments at intervals running through forty-nine years; that the stock mortgages had no term prescribed for their payment, and it was not until 1873, forty years after the date of the charter, that the legislature authorized annual calls on the stockholders of two dollars per share, and these stock-subscription debts and mortgages to be realized in the protracted method and in the long period indicated by the act No. 45 of 1873, during which the existence of the bank under its charter was necessarily implied and recognized by the original charter, as well as by the act of 1873, were to be enforced by the bank for the benefit of the bondholders to whom the mortgages were assigned as the provision for payment of the bonds, and the charter declared that this pledge of the mortgages should be
17 "perpetual" until the full payment of the bonds in principal and interest, and the bank, under its charter, was to enforce this perpetual pledge.

That this charter granted under the constitution of 1812 was subject by that instrument to no limitation whatever as to time or prolongation; that from the nature of the functions of the bank in respect to the bond debt and the forty-nine years' loans to the stockholders of the money procured from the bondholders and enforcing for the payment of the bonds stock mortgages to be "perpetual" and to be realized only by the methods already stated, and other provisions of the charter, and especially the existence of the bank to accomplish the payment of the bonds, it is manifest that while fifty-one years was named in the charter it was clearly the legislative purpose that the existence of the bank under its charter carried the right of prolongation for the interest of the State itself, the bondholders, and the bank, all concerned in the performance of the functions imposed on the bank, and this right of prolongation beyond the said fifty-one years is thus to be deemed affirmed by the charter itself of 1833 and 1836, and your orator shows that the legislation of the State has been at all times in accordance with the character of this charter as herein set forth and in addition to the provisions already referred to of the charter itself, and in the same connection your orator refers to the legislation of 1842 prohibiting the bank from going into liquidation, and the legislation of 1868, seven years after, the act of 1873, authorizing the long annual calls

on shareholders, directing the bank to make compromises with the shareholders, and finally to the legislation of 1874 enacted to protect the State against the bond debt and to accomplish the object of the charter of 1833 and 1835, by which the legislature enacted that the charter of the Citizens' bank should be prolonged to 1911, thus continuing to that date the charter, with all its immunities, including said exemption from taxation, the preamble and first
18 section of which act referring to the prolongation of the charter is herewith incorporated, to wit:

"Whereas, by reason of the great loss suffered by the agricultural interest of the State in consequence of the late war, it would be ruinous for the stockholders to pay within the next thirteen years, before the limitation of the charter of the Citizens' Bank of Louisiana, the amount of arreared installments and interest due by them, as well as the balance of their indebtedness; and whereas the sacrifice of the lands mortgaged for the payment of the State bonds issued in favor of the bank would endanger the security of the State; and whereas it is the interest of the State that a prolongation of the charter of the Citizens' Bank of Louisiana be allowed, so as to enable said institution to collect the debts due by the stockholders and thereby facilitate the payment of the State bonds;

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana, in General Assembly convened, That the provision of the thirtieth section of the act entitled An act to incorporate the Citizens' Bank of Louisiana, approved April 1, 1833, which reads as follows: "And the charter shall continue for and during the space of fifty-one years from the passage thereof," be amended and re-enacted as follows: "That the charter of the Citizens' Bank of Louisiana shall continue for and during the space of twenty-five years from and after the time fixed for its liquidation by the said charter, and shall expire on the thirtieth of January, 1911;" and to all of which acts incorporating the bank and others, to wit, the act of the 1st of April, 1833, incorporating the Citizens' bank, the amendatory act of the 30th of January, 1836, the act *of* No. 98 of 1842, the act No. 45 of 1873, and the act No. 40 of 1874, special reference is made, and your orator prays that the same be taken as a part of this bill.

19 That this charter of the Citizens' bank, with its stipulations in favor of the State and with the power of prolongation as stated, was accepted by the bank, and on the faith of its provisions, including said exemption from taxation of the bank, its capital and property, twelve millions of dollars were subscribed to the capital stock of the bank, and in the same faith the bank has acquired and now holds property necessary for its purposes and acquired in the course of its business of value greater than five thousand dollars; that with the same reliance on said charter the bonds of the State to the amount of seven millions of dollars were negotiated abroad and all the proceeds of said bonds were loaned by the bank on the security of the stock mortgages to its shareholders, mainly planters, and applied to promote the planting interest as proposed by the charter.

That the act of 1833 provided for the issue of the bonds of the bank to raise its capital, but the act failed, and it was under the act of 1836 that the State bonds were negotiated and the money of the bondholders to the large amount stated was obtained on the faith of that act of 1836, which explicitly repeated the exemption from taxation of the bank and its capital and property and pledged to the bondholders the instrumentality of the bank to enforce for their benefit the aforesaid stock mortgages until the said bonds in their entirety should be fully paid in principal and interest.

And further your orator shows in 1833, when the financial reverses preceding that year had led to the default of the bank in paying interest on the bonds and to the forfeiture of its charter, the said bond debt then being upwards of six millions of dollars, the legislature, realizing and in the view of guarding against the consequent danger of loss to the State, invited and authorized the furnishing of one million of dollars fresh capital for the Citizens' bank, and the capital was obtained on the faith of the State restoring the
20 charter with all its immunities, including the aforesaid exemption, evidenced by the acts of the legislature No. 141 of 1852, No. 246 of 1853, and article 121 of the constitution of 1852, to all of which reference is also made.

That of the aforesaid bonds of the State upwards of four millions of dollars are still extant, unpaid, in the hands of holders for value, and that the aforesaid stock mortgages not yet realized and other assets pledged for the charter and for the bond debt to be administered, realized, and applied by the bank to that debt amounts to upwards of five hundred thousand dollars.

That articles 203, 234, 237 of the constitution of Louisiana of *18* 1879 declares that there shall be no exemption from taxation save of church, school property, and of capital employed in manufactures of a certain class and other enumerated kinds of property, and that no corporation shall engage in any business except that specified in its charter or hold real estate longer than ten years, and that no charter of any corporation shall be altered or amended except subject to the provisions of said constitution, and in the year 1880, the aforesaid bond indebtedness of the State then subsisting to a large amount, say upwards of four million of dollars, the State, by the act No. 79 of 1880, in its own interest and for its protection against said indebtedness, authorized compromises with the mortgage stockholders of the bank in order to realize from said compromises the means to pay said indebtedness of the State, and said act undertook to require your orator to accept said act under the conditions of articles 234 and 237 of the State constitution, and said acceptance was given in order to carry into effect said compromises; and your orator further shows that on the 9th of July, 1890, the legislature of Louisiana, by act No. 106, directed the assessment and taxation of property and the shares of stock of corporations, and to effect said object created a board of assessors, with
21 power to call on banks and other corporations for returns of their property and the shares of their capital stock and the list of their shareholders, and directed said board to assess said

property and shares for taxation by the city and State, and subsequently the council of the city of New Orleans, by ordinance No. 5846, directed the levy of taxes for the city of New Orleans on property and shares of stock of corporations.

And now your orator shows that its domicil is in the first tax-collection district of this city, and it is the owner of property in all the tax-collection districts of this city created by the act No. 85 of 1888; that under color of the said articles of the State constitution and of said act of 1880 and of said act of 1890 and of said ordinance of the council the board of assessors for the parish of Orleans now advance the pretension that your orator is no longer entitled to the aforesaid exemption from taxation conferred by its charter and recognized by the legislation of the State, and, as will be shown also, by the courts of the State, but said board claim that said exemption has been taken from your orator by said constitution of 1879 and acts of the legislature aforesaid, and the said board of assessors avow their purpose and threaten and are about to assess the capital and property and shares of stock of your orator for taxation by the city of New Orleans and State for the years 1891, 1892, 1890, and 1889, and said taxes thus proposed to be assessed exceed in amount six thousand dollars, and to the end of making said assessment said board has demanded of your orator returns of its capital, its property, and of the shares of its capital stock, and a list of its shareholders, and unless prevented by process of said court said board will make said assessment for taxation — record the same in the mortgage office, thus casting a cloud upon the business and property and the shares of the capital stock aforesaid, and will thereby
22 seriously depreciate the value thereof, and said city and State will enforce payment of the taxes based on said assessment and seize and sell the property of your orator and the shares of its stock to compel payment of said illegal taxes based on said assessment, all to the great prejudice, damage, and injury of your orator, and said damage and injury will largely exceed in amount six thousand dollars.

Your orator, further complaining, shows that both before and since the constitution of 1879 and the enactment of the laws aforesaid under color of which said board of assessors now pretends to find its warrant for the aforesaid assessment, that the aforesaid exemption of taxation conferred by your orator's charter has been of constant recognition by the State and city, and the present attempt to make the assessment for the three years prior to the current year admits to that extent the recognition hitherto by all of the aforesaid exemption; and, further complaining, your orator shows that on the 25th June, 1878, suit was instituted in the civil district court for the parish of Orleans to enforce the payment of taxes due the city and State, based on the assessment of the property and shares of stock of your orator made and attempted to be enforced at that time, and orator resisted the suit on the ground of the exemption from taxation conferred by its charter; that on that issue it was adjudged by the supreme court of the State, as well as by the district court, that said assessments were void, and that orator was not

subject to taxation on its capital, property, or shares of stock, as more fully appears by said suit and the judgment of the supreme court therein rendered on the 9th of July, 1880, reported in the 32nd Louisiana Annual, p. 239; and further your orator shows that in two suits brought subsequently by your orator in the civil district court for the parish of Orleans to prohibit the assessment and taxation by the State and city of orator's capital, property, and
23 shares of stock the aforesaid exemption was again sustained and said assessment and taxation decreed void and enjoined and prohibited, one of said suits having been brought on 6th Nov., 1884, and the other on 21st March, 1887, and decided respectively on the Nov. 5th, 1886, and 27th April, 1887; all of which appears by copies of said decrees herein filed and to which reference is made; and your orator shows the present attempt to make assessments against your orator and against its shareholders is in defiance of its charter and of the decisions of the courts of Louisiana, and your orator avers and pleads said final decrees of the supreme court and district court as *res judicata* on the issue herein, and avers said decisions conclude the said board and the city of New Orleans and the State from making any assessment of orator's capital, property, or shares of stock or enforcing the collection of any taxes based on such assessment.

And, further complaining, your orator shows that the aforesaid legislative act No. 40 of 1874 continuing the charter of your orator with all its privileges and immunities, including said exemption until 1911, was a competent and necessary exercise of legislative power, in harmony with and fulfillment of the object of the charter itself granted in 1833; has stood on the statute book for nearly twenty years unassailed and in full force, and is binding on the State and city of New Orleans, and especially upon their executive officers, who, of their own volition, without any judicial warrant, propose now to disregard the charter of your orator and the said act of 1874.

And your orator shows that its charter and all immunities and privileges thereof, including the aforesaid exemption from taxation until 1911 of the capital and property and shares of stock of your orator, constitutes a contract between the State, stipulating
24 for itself and for the city, and your orator and its shareholders, and said contract is protected by the Constitution of the United States from any change or impairment, whether attempted in the form of provisions inserted in the State constitution or by legislative acts or by ordinances of the council of New Orleans, and each and all of said articles 203, 234, and 237, and any others that may be claimed to authorize the aforesaid assessments against your orator, and said acts of the legislature of Louisiana No. 79 of 1880, No. 106 of 1890, and any other legislative acts that may be relied on to countenance the action of said board of assessors, and said ordinance of the council of the city of New Orleans approved Dec'r 14, 1891, No. 5846, in so far as they or any of them purport or tend to authorize the assessment and taxation of the capital or property or shares of stock of your orator, are each and all void and of no effect because violative of the and repugnant to the tenth section

of article 1 of the Constitution of the United States, prohibiting all legislation impairing the obligation of contracts, and under this protection of the Constitution of the United States your orator is entitled to relief in this court to prevent the aforesaid unlawful assessment complained of in this bill of your orator's property, stock, and capital.

To the end, therefore, that said board of assessors for the parish of Orleans may be enjoined and prohibited from making any assessment of the capital or property or shares of the capital stock of your orator, and from demanding or insisting upon any returns by your orator of its capital, property, or stock or shares thereof, or list of its shareholders, and that the city of New Orleans and the State tax-collectors of the 1st, 2d, 3d, 4th collection district- may be enjoined and prohibited from enforcing payment of any tax based on said assessment, or from
25 endeavoring to enforce the same in any manner, and may it please your honors to grant unto your orator the writ of injunction, directed to said Board of Assessors and to said City of New Orleans and to said State Tax-collectors, enjoining and prohibiting them from making or causing to be made said assessments and from demanding or insisting on any returns of the capital stock or shares thereof or list of the shareholders of said stock and from enforcing or attempting to enforce the payme*n* of any taxes based on said assessments; and your orator prays that in the meantime and until the further order of this court a restraining order issue, directed to said defendants, restraining them to the full extent and scope of the injunction herein prayed for, and to the end that that injunction may be decreed to be perpetual, and that the aforesaid articles of the constitution and laws and ordinances of the city council, under color of which defendants are acting, may be decreed to be null and void so far as they undertake to direct the assessment of the capital or property or shares of stock of your orator, and that the aforesaid exemption from taxation of said capital, property, and shares of stock may be recognized and adjudged to be valid to the full extent herein set forth.

May it please your honors to grant to your orator the writ of subpœna directed to said Board of Assessors for the Parish of Orleans, The City of New Orleans, C. H. Parker, State tax-collector for the 1st collection district; Henry Guillotte, State tax-collector for the 2nd collection district; H. D. Monnier, State tax-collector for the 3rd collection district, and W. T. Patton, State tax-collector for the 4th collection district, all defendants herein, commanding them to be and appear in this court on the day to be named in the process and to stand to and abide all decrees that may be rendered herein, and for general relief.

(Signed) HENRY C. MILLER,
Solicitor for Compl't.

26 George W. Nott, the president of the Citizens' Bank of Louisiana, being duly sworn, deposes and says that all the facts stated in the foregoing bill of complaint to be upon his own

knowledge are true, and those that are stated to be on the knowledge of others he believes to be true.

(Signed) G. W. NOTT, *Pres't.*

Sworn to and subscribed before me, notary, at New Orleans, Louisiana, on this eighth day of August, A. D. eighteen hundred and ninety-two.

[SEAL.] (Signed) EDGAR GRIMA, *Not. Pub.*

Let this bill of complaint be filed, together with the exhibits accompanying the same, and let the defendants show cause on the first Monday of November, A. D. 1892, why the injunction therein prayed for should not issue, and let a restraining order issue meanwhile and until the hearing and decision upon this application restraining the defendants from making any assessment, and from attempting to collect the same, of any tax upon the capital or property of the complainant acquired by virtue of the act "to incorporate the Citizens' Bank of Louisiana," approved April 1, 1833, and further, meanwhile and until the hearing and decision upon this application, restraining the defendants from all steps towards collecting any tax upon the shares of the capital stock of the complainant beyond the obtaining of the returns or list of the shareholders requisite for the assessment of taxes upon the shares and beyond the assessment of the tax.

August 13, 1892.

(Signed) EDWARD C. BILLINGS, *Judge.*

(Bill filed August 17, 1892.)

27 *Answer of the Board of Assessors and of the City of New Orleans.*

Filed Nov. 7, 1892.

CITIZENS' BANK
vs.
THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS *et als.*

No. 12112. United States Circuit Court, Eastern District of Louisiana.

The joint and several answers of The Board of Assessors for the Parish of Orleans and of The City of New Orleans, two of the defendants, to the bill of complaint of The Citizens' Bank of Louisiana, plaintiff.

These defendants respectively, now and at all times hereafter, saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering, say that in 1833 the legislature of the State of Louisiana passed the act to incorporate the Citizens' Bank of Louisiana for the purpose set forth in said act; that according to said act (section 1)

the capital of said bank was to be twelve millions of dollars, to be procured by means of a loan or loans to be made by the directors of said bank, and (section 4) to facilitate the negotiation or obtaining of said loan the directors were authorized and empowered to issue the bonds of the bank, and for the payment of these bonds the mortgages given by the stockholders under said act (section 3) were to be pledged to the holders of said bonds; that the said corporation was invested with the rights and privileges usually accorded to banks (section 10); that the stockholders were entitled to certain credit upon pledge of their stock (section 11); that
28 the bank was empowered to advance money to individuals upon certain conditions (sections 12 and 13), and that the State upon certain conditions (section 11) was to enjoy a credit of at least five hundred thousand dollars.

That by the said statute the said corporation was authorized to subscribe to the stock of the Lake Borgne Navigation Company, and it was also provided (section 14) that the directors of said corporation might succeed to and become vested with all the powers, rights, and privileges granted to the said navigation company, and the corporation became subject to all the clauses, conditions, stipulations, and limitations whatsoever contained in the charter of said company.

That said corporation was also empowered (section 16) to establish and keep a railroad, to communicate from beyond the line of the Pontchartrain railroad and any point or points between the River Mississippi, the Gentilly and Chef Menteur road and extending to and in the parish of St. Bernard.

That it was further provided by said act (section 30) that at the expiration of the charter of said corporation, if the corporation should have acquired the rights, privileges, and advantages mentioned in the 14th section of the act, viz., as successor of the Lake Borgne Navigation Company, and should have had quiet enjoyment thereof, it should be the duty of said corporation to deliver to the State all the canals and appurtenances and dependencies mentioned in the 15- and 18th sections of the act of incorporation of said company, and also all roads that may have been made, as well as all the machinery, cars for transportation, and all other dependencies thereon, rights of tolls, and every other privilege attached thereto, which should then become the full property of the State; and it was enacted by said statute that in consideration of said cession, or in lieu thereof the bonus mentioned in the fifteenth section of said act incorporating the Citizens' Bank of Louis-
29 iana, the said corporation should during its existence be exempt in its capital and property acquired under said act from all taxes due to the State or to any parish or corporation created by law of this State, and the charter of said corporation was to continue for and during the space of fifty-one years from the passage of said act.

And these defendants pray that said act may be taken as part of this answer.

Further answering, these defendants show that in 1836 the legis-

lature of the State of Louisiana passed an act entitled "An act amendatory and supplementary to the several acts relative to the 'Act to incorporate the Citizens' Bank of Louisiana,'" whereby to facilitate the bank in negotiating the loan of twelve millions of dollars authorized by the act of incorporation of April, 1833, the faith of the State was pledged for the security of said sum or such part thereof as might be required by the bank, and it was enacted as follows: (Section 3.) "That for the guarantee of the bonds to be emitted by the State in favor of the Citizens' bank and of the interest thereof, and for which the State pledges its faith, all the securities granted by the act of incorporation of said bank, and specially by the third and fourth sections of said act, to the holders of its bonds are hereby transferred to the State and the holders of the bonds which may be issued in virtue of this act."

That by section 7 of said act of 1836 the 14th section of the act to incorporate the Citizens' bank, authorizing subscription to the capital stock of the Lake Borgne Navigation Company; the fifteenth section of said act, fixing a penalty for not digging the canal therein described, and all the provision- in said act relative thereto were repealed.

30 That by section 4 of the act of 1836 the State was declared entitled to a certain interest in the profits of the bank, and the capital of said bank was exempted from any tax laid by the State or by any parish or body politic under the authority of the State during the continuance of its charter.

Further answering, these defendants show that they are informed and believe, and therefore aver, that the effect of this legislation was that whatever exemption may have been granted to the Citizens' Bank of Louisiana was, according to said act of 1836, applicable only to its capital and not all its property, and that such exemption ceased at the expiration of its charter as originally stated, viz., in 1884, or fifty-one years after the passage of the act of incorporation, and these defendants pray that said act of 1836 may be taken as part of this answer.

Further answering, these defendants show that according to article 118 of the constitution of the State of Louisiana of 1868 all property was to be taxed in proportion to its value, to be ascertained as directed by law, although the General Assembly was given power to exempt from taxation property "actually used for church, school, or charitable purposes;" and these defendants are informed and believe, and therefore aver, that during the continuance of the said constitution the General Assembly, by virtue of said article 118, was without power to pass any act the effect of which would be to exempt the Citizens' Bank of Louisiana from taxation or to continue beyond 1884 the exemption granted said bank by the act of 1833, amended by the act of 1836, and that consequently act No. 40 of the General Assembly of Louisiana of 1874, enacting that the charter of the Citizens' Bank of Louisiana shall expire on the 30th of January, 1911, could and did have no other effect

31 than to continue the bank's corporate existence beyond the original date of the expiration of its charter, subject to the

constitution of 1868—that is to say, the bank's corporate existence was continued with unimpaired right to exemption up to the original date of the expiration of its charter, say in 1884, but that thereafter it became subject to taxation in accordance with the constitution of the State. Further answering, these defendants are informed and believe, and therefore aver, that any legislation by the General Assembly during the existence of said constitution of 1868 is controlled or to be construed according to the limitations of said constitution, and that, referring to the legislation prior to 1868 and mentioned in complainant's bill, the duration of the exemption from taxation granted to complainant is clearly and specifically stated in section 30 of the act of 1833 incorporating the bank to be fifty-one years from the passage of the act, and that by the act of January 30th, 1836, above cited, the exemption is narrowed by being restricted to the capital of complainant.

Further answering, these defendants show that they do not know, and therefore cannot say, what amount was subscribed to the capital stock of the bank, nor to what extent property was acquired by the bank in the course of business, nor how far said property may be necessary (if at all) for the purposes of the bank, nor to what amount the bonds of the State may have been negotiated abroad nor how negotiated, nor what may have been done with the proceeds of said bonds, and they leave the plaintiff to make such proof thereof as it may be able to produce.

Further answering, these defendants show that in 1852 the General Assembly of Louisiana passed act No. 141, entitled "An act for the relief of the Citizens' Bank of Louisiana," of which the preamble is as follows:

32 "Whereas the State of Louisiana is now responsible for bonds issued in favor of the Citizens' Bank of Louisiana for a sum exceeding six millions of dollars, together with accruing interest thereon; and whereas the present condition of said bank is such as to expose the State to loss from the inability of said bank to meet the payment of said bonds and interest if the liquidation of the bank be continued on the system now established by law; and whereas the managers appointed by the State for said bank have represented that the stockholders will be enabled to secure the State from the said risk of loss if they be restored to the control and administration of the affairs of said bank, with the rights, privileges, and immunities possessed by said bank at the date of the decree of forfeiture rendered against it in the first district court of New Orleans, now the fifth district court of New Orleans, on the eighteenth day of October, eighteen hundred and forty-two: Now, therefore."

That this was an act to restore upon the condition mentioned in said statute the administration and conduct of the affairs of the bank to the stockholders in the same manner, with the same rights and privileges, to the same extent, and with the same restrictions as if said decree of forfeiture had never been rendered.

But, according to the express language of the act, the bank, upon the accomplishment of the conditions specified, was only to resume

such limited rights and privileges as it enjoyed prior to the forfeiture of its charter, and that, as provided by the acts of 1833 and 1836 hereinbefore mentioned, the capital of the bank during the continuance of the bank's charter, which was to expire, say, in 1884, should be exempt from any tax laid by the State or by any parish or body politic under the authority of the State.

33 Further answering. these defendants show that thereafter, viz., in 1853, the General Assembly of Louisiana passed act No. 246, which is entitled An act to authorize the Citizens' Bank of Louisiana to convert shares secured by mortgage into cash shares, and that by the 1st section of this act the board of directors to be elected under the act of 10th of March, 1852, entitled "An act for the relief of the Citizens' Bank of Louisiana," were empowered to raise one million of dollars by obtaining the payment in cash of ten thousand out of the one hundred and forty-four thousand shares of the capital stock of the bank; and these defendants, further answering, show that article 121 of the constitution of the State of Louisiana of 1852 provided that the legislature shall have power to pass such laws as it may deem expedient for the relief or revival of the Citizens' Bank of Louisiana, and the acts already passed for the same purpose are ratified and confirmed: Provided, that the bank is subject to the restrictions contained in articles 119 and 120 of the said constitution, the said articles 119 and 120 referring to suspension of specie payments, and in case of insolvency of any bank or banking association to the preference to which bill-holders were to be entitled; and these defendants are informed and believe, and therefore aver, that neither by said articles 121 of the said constitution of 1852 nor by said act No. 141 of 1852 and said act No. 246 of 1853 was the limited exemption from taxation enjoyed by the bank under the acts of 1833 and 1836 as heretofore set forth in any manner extended or enlarged; and defendants pray that said acts No. 141 of 1852 and No. 246 of 1853 may be taken as part of this answer.

Further answering, these defendants show that they do not know, and therefore cannot say, what amount of the bonds of the State are still extant unpaid in the hands of holders for value nor to what extent the said mortgages and other assets that may

34 have been pledged for the bond debt are yet unrealized, and therefore leave the complainant to make such proof thereof as it shall be able to produce.

Further answering, these defendants show that according to articles 203 and 207 of the constitution of Louisiana of 1879 all property shall be taxes except public property, places of religious worship or burial, charitable institutions; property used exclusively for colleges or school purposes, the estate of any public library and that of any literary society used by or connected with such library, books and philosophical apparatus, and paintings and statuary of any company or association kept in a public hall, provided said property be not used for private or corporate profit, and that household property to value of $500 is also exempt, as are also for a certain length of time the capital, machinery, and property used in

certain manufactures; that article 234 of said constitution provides, "The General Assembly shall not remit the forfeiture of the character of any corporation now existing, nor renew, alter, or amend the same, nor pass any general or special law for the benefit of such corporation except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this constitution;" and that article 237 of said constitution provides, "No corporation shall engage in any business other than that expressly authorized in its charter or incidental thereto, nor shall it take or hold any real estate for a longer period than ten years, except such as may be necessary and proper for its legitimate business or purposes;" and defendants pray that the articles cited herein from said constitutions of 1868 and 1879 may be taken as part of this answer.

That the General Assembly of Louisiana, by act No. 79 of 1880, authorized compromises of the liability of the mortgage stock-
35 holders of the bank, arising out of the stock mortgages granted to secure their subscription to the capital stock of the bank; said compromises to be made when deemed judicious by the bank and with the assent of the bondholders, and the sums realized from said compromises, as well as from the enforcement of said mortgages by legal proceedings, to be applied to the satisfaction of the bonds of the State issued in aid of the bank and to the liabilities and necessary expenses of the mortgage-stock department; that these defendants have no personal knowledge as to what may have been the amount of the subsisting bond indebtedness of the State in 1880; and these defendants believe that said act No. 79 of 1880 was passed at the instance and for the benefit of the bank.

Further answering, these defendants admit that the bank was required to accept said act No. 79 of 1880 under the conditions prescribed in articles 234 and 237 of the constitution of Louisiana of 1879, and these defendants are informed and believe that such acceptance was made as required by the provisions of the said statute, and defendants refer to the admission in the bill by plaintiff that said act was accepted by the bank, and these defendants pray that said act No. 79 of 1880 may be taken as part of this answer; and these defendants, further answering, say that as they are informed and as appears by the accompanying certified copy of an act dated April 27, 1881, before Edgar Grima, notary public, being an act of registration of articles of agreement entered into during the year 1880, and which certified copy, marked Exhibit "A," these defendants pray may be taken as part of this answer, the Citizens' Bank of Louisiana, recognizing the firm of Hope and Company as the mandatory of the bondholders and other creditors, entered into articles of agreement with the said Hope and Company during the year 1880, which articles declare that the holders of the bonds issued by the State in aid of the Citizens' bank consent to act No. 79
36 of 1880, which act is stated in said articles to have been obtained by the bank from the legislature, and said articles, referring to the holders of the State bonds as parties of the second part and to

the Citizens' Bank of Louisiana as the party of the first part, contain the following, viz:

"The parties of the second part, in consideration of the engagements taken by the banking department of the bank to carry on and to conclude the liquidation of the mortgage-stock department with fidelity, and to pay over the sums realized to the holders of the bonds regularly and punctually, and to be answerable for any neglect or default in the fulfillment of her engagements, agree with the party of the first part never to sue for nor seek to recover any other sum from the bank aforesaid on its endorsement or on account of the bonds than shall be realized from the mortgage-stock department, and the bondholders agree never to make any claim or demand on the banking department or on its assets for payment of said bonds, except for the amounts realized from the legal and proper liquidation of the mortgage-stock department under the terms of these articles of agreement."

Further answering, these defendants admit that by act No. 85 of 1888 of the legislature of Louisiana, as amended by act No. 106 of 1890, the legislature of Louisiana directed the assessment and taxation of property and the shares of stock of corporation as in said acts set forth, and to effect said object created a board of assessors with power to call on banks for returns of their property and the shares of their capital stock and the list of their shareholders, and directed said board to assess said property and shares for taxation by the city and State, and subsequently the council of the city of New Orleans, by ordinance No. 5846, directed the levy of taxes for the city of New Orleans as in said ordinance set forth.

Further answering, these defendants admit that the Citi-
37 zens' Bank of Louisiana is domiciled in the city of New Orleans and has its banking-house in the first tax-collection district of the city, and these defendants have no reason to doubt that said bank is the owner of property in all the tax-collection districts of this city created by act No. 85 of 1888.

Further answering, these defendants show that for the following reasons they content and assert that the Citizens' Bank of Louisiana is liable to taxation, viz:

That by section 4 of the act of 1836, hereinbefore cited, the capital, and the capital only, was exempted from taxation during the continuance of the bank's charter.

That by act of 1833 incorporating said bank the charter was to continue for the space of fifty-one years from the passage thereof—that is, some time in 1884.

That according to the constitution of Louisiana of 1868, article 118, the exemption of property from taxation was allowed to be exercised only in favor of property actually used for church, school, or charitable purposes.

That in consequence of said article 118 of the constitution of Louisiana of 1868 the legislature of Louisiana, by act No. 40 of 1874, providing for the continuance of the charter of the bank until 1911, continued the corporate existence of the bank, with such privileges as the bank then possessed, until some time in 1884, but

could not extend beyond 1884 the bank's limited exemption from taxation as above set forth, and that subsequently to 1884 the corporate existence of the bank was to continue until 1911, but without exemption from taxation.

That even had this exemption from taxation not expired at the date specified for the expiration of the charter under the said
38 act of 1833, the bank, by its acceptance of act No. 79 of 1880, has subjected itself to the conditions prescribed in articles 234 and 237 of the constitution of Louisiana of 1879; that, in consequence, the bank since said acceptance has held its charter subject to the provisions of said constitution, and that these provisions subject the bank to taxation.

Further answering, the defendants The Board of Assessors show that they have avowed their purpose to assess for the years 1889, 1890, 1891, and 1892 under said act No. 85 of 188–, as amended by said act No. 106 of 1890, the property of the said bank and the shares in its capital stock, and defendants believe that the taxes thus proposed to be assessed will exceed in amount $6,000, and they admit that to the end of making said assessment said board has demanded of the complainant a return of its property and of its shareholders, and unless prevented by process of this court said board proposes to make said assessment as aforesaid for taxation, and these defendants admit that the purpose of such proceedings is to enforce the payment of taxes based on such assessment.

Further answering, these defendants deny that the present attempt to make the assessment for the current year and for the three years prior to the current year is any admission by them of the exemption claimed by plaintiff.

Further answering, these defendants show that they are informed that the decision of the supreme court of Louisiana referred to in complainant's bill, as reported in the 32nd Louisiana Annual, page 239, does not decide that complainant is entitled to exemption from taxation to the extent claimed in its bill herein, but, on the contrary, so far as the decision pronounced on the question of exemption from taxation such exemption was applicable
39 to the capital only; and these defendants show that said decision as reported was rendered in February, 1880, prior to the expiration of the bank's charter according to the act of 1833 and prior to the passage of act No. 79 of 1880, and even if the decision had the scope claimed for it in complainant's bill herein, the decision is inapplicable to questions arising upon the expiration of the charter at the date fixed in the act of 1833 and upon the acceptance by the bank of the conditions set forth in said act No. 79 of 1880, and these defendants say that they are informed that in the two suits brought subsequently in the civil district court for the parish of Orleans, viz., Nos. 12429 and 20541 of the docket thereof, the issues now raised by these defendants in this answer were not presented to nor passed on by the court, and these defendants upon their information and belief deny that any one of the alleged judgments mentioned in complainant's bill herein is *res judicata* as to this existing controversy; and these defendants contend that in this

present controversy none of these alleged judgments of court can in any manner whatsoever affect these defendants adversely.

And these defendants are informed and believe, and therefore aver, that their proposed action will not be in disregard of the complainant's charter, nor of the constitution of Louisiana of 1812, nor of any of the acts referred to in the bill of complainant herein nor of the act No. 40 of 1874, and show that they are informed and believe, and therefore aver, that, according to the correct construction of said act No. 40 of 1874, complainant's right of exemption from taxation was not and could not be extended thereby beyond the date fixed by the act of 1833 for the expiration of the bank's charter, notwithstanding that the bank's corporate existence was continued until 1911.

Further answering, these defendants, for the reasons here-
40 inbefore recited, deny that act No. 40 of 1874 extended to 1911 the complainant's exemption from taxation, and they say that whatever may have been complainant's rights during the continuance of the charter, as provided by the acts of 1833 and 1836, they deny that act No. 40 of 1874 constitutes any contract between the State, stipulating for itself and the city, and complainant and its shareholders, under which complainant is entitled to exemption from taxation beyond the date fixed by the act of 1833 for the expiration of the charter; and these defendants, for the reasons hereinbefore set forth, deny that article 118 of the constitution of Louisiana of 1868, and that articles 203, 207, 234, and 237 and any other articles of the constitution of Louisiana of 1879, and said act No. 79 of 1880, and said act No. 85 of 1888, and said act No. 106 of 1890, and said ordinance of the council No. 5846, are in any manner violative of and repugnant to the 10th section of article 1 of the Constitution of the United States, prohibiting legislation as to the impairment of contracts.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) JAMES A. RENSHAW,
Pres't Board of Assessors for the Parish of Orleans.

41 [SEAL.] JOHN FITZPATRICK, *Mayor.*
E. A. O'SULLIVAN,
City Attorney,
H'Y RENSHAW,
Ass't City Att'y,
Solicitors for the Board of Assessors and for the City of New Orleans.

James A. Renshaw, president of the board of assessors for the parish of Orleans, being duly sworn, deposes and says that he has read the foregoing answer and signed the same and knows the contents thereof to be true of his own knowledge, except as to the matters therein stated to be on his information and belief, and as to those matters *be* believes them to be true.

(Signed) JAS. A. RENSHAW, *President.*

Sworn to and subscribed before me this 7th day of Nov'r, 1892.

[SEAL.] (Signed) CAS. H. SHIELDS, *Not. Pub.*

John Fitzpatrick, mayor of the city of New Orleans, being duly sworn, deposes and says that he has read the foregoing answer and signed the same and knows the contents thereof to be true of his own knowledge, except as to the matters therein stated to be on his information and belief, and as to those matters he believes them to be true.

(Signed) JOHN FITZPATRICK, *Mayor.*

Sworn to and subscribed before me this 7th day of Nov'r, 1892.

[SEAL.] (Signed) CAS. H. SHIELDS, *Not. Pub.*

42 *Supplemental Bill.*

Filed Feb'y 11, 1893.

To the honorable the circuit court of the United States in and for the fifth circuit and district of Louisiana:

Now comes the Citizens' Bank of Louisiana and, reserving the benefit of and insisting upon all the defences heretofore urged in the bill of the complainant, and in order to correct some inaccuracies in the supplemental bill herein filed, and with the leave of this court, files this amended and supplemental bill in the suit of your orator *vs.* The Board of Assessors, No. 12112 of the docket of this court.

That under the order of this court permitting the assessment subject to the decree to be rendered of the property, shares, and of the capital stock of your orator and under the protest that no such assessments were authorized by law, and that if said shares or property were liable for taxation, and they are not, that in making said assessments the market value of said shares for 1889 and 1890 and the book value thereof for 1891 and 1892 should be adopted, and that the deductions directed by law should be given, the board of assessors for the parish of Orleans have prepared supplemental rolls for 1889, 1890, 1891, 1892 exhibiting the assessments for city and State taxation for those years of said shares of the capital stock and of the property of your orator; that under said protest your orator furnished said board with a list of its shareholders and the book value of said shares in 1891 and 1892 and claimed that if said shares were liable to taxation, and they are not, that the *pro rata* of all direct taxes proposed to be assessed upon the real estate of your

orator in this and other parishes of the State should be deducted; and your orator owned and still owns country property—*i. e.*, in said other parishes real estate—of upwards of one hundred and thirty thousand dollars of value, on all of which it is proposed to
43 assess taxes for said years 1889, 1890, 1891, 1892, and in fact said assessments, notwithstanding your orator's protest, have already been made, as your orator believes and charges; but, disregarding said demand and against the protest of your orator, the board of assessors for the parish of Orleans have assessed for taxation for said years 1889 to 1892, inclusive, the real estate of your orator in the parish of Orleans, and have assessed the shares of stock aforesaid for said years in excess of their book value, and have not allowed any deduction from said share assessments for the direct taxes proposed to be claimed upon said country property, said assessments being as follows, to wit: For the year 1889, on the shares of stock, $15.88 per share, and on the property, $70,000.00; for the year 1890, on the shares of stock, $14.58 per share, and on the property, $70,000.00; for the year 1891, on the shares of stock, $90.91 per share, and on the property, $70,000.00; for the year 1892, on the shares of stock, $89.58 per share, and on the property, $70,000.00, as is more fully shown by said supplemental assessment-rolls, to which reference is made for fuller explanation and greater certainty; and your orator shows that even if said shares and property were liable to taxation, and they are not, that said share assessments for 1891 and 1892 *is* in excess of the book value thereof—*i. e.*, the actual value—and as shown by the books of the bank, and in said share assessments no deduction has been given for the direct taxes on said country property, by reason of which said assessments are void, as well *as* because of the exemption from taxation of your orator's property, capital, and shares of stock *and* because the deductions from the share assessments directed by law, under color of which said assessments are made, have not been given.

Your orator shows that said supplemental assessments propose to charge the shareholders and the shares as owned by them in
44 1892 with the taxes asser*t*ed for the previous years; that the said shares have been and are bought and sold from day to day in the market, and thus have been and are changing hands from time to time; that the shareholders of 1890, 1891, 1892 are not in any of said years in great part the same as the shareholders of the previous years or year; that there is no lien on the shares, and the shareholders acquired said shares free from and cannot be charged with, nor can their shares be subject to any charge for, nor could your orator, even if the shares were taxable, demand from its shareholders, any taxes on said shares claimed for years when the shares were owned by others than the present shareholders—*i. e.*, of 1892; and your orator shows that the law under color of which the assessors claim furnishes no warrant to assess and charge the shareholders of any years for taxes claimed for previous years, and the seizure and sale of said shares or to exact payment from your orator of the taxes claimed on said shares for the years previous, during which the shares were owned by others than those of the years of

the assessments, would be to take the property of the shareholders or of your orator without due process of law, and any law or authority of the State professing to authorize such seizure and sale or demands or exaction would be void as repugnant to the fifth amendment of the Constitution of the United States, forbidding the taking of property of citizens without due process of law.

And, further, your orator shows that even if said shares were taxable, then each shareholder would have to be assessed in the assessment district of his residence, instead of which, although said shareholders reside in different assessment districts, all of them are assessed in said supplemental rolls in one district, that of the bank; and, further, your orator shows that such assessments do not exhibit the amount of the taxes assessed to its shareholders essential
45 to constitute an assessment, and on these grounds to seize and sell said shares or exact payment from your orator of any tax based on said supplemental assessment-rolls would be to take the property without due process of law, forbidden by said fifth amendment of the Constitution of the United States.

And your orator shows that notwithstanding the aforesaid protest and complaint of your orator the board of assessors have persisted in said assessments, have recorded the same in the office of the recorder of mortgages of this parish, so as to affect the real estate and stock of your orator with apparent liens, thereby clouding the title thereto.

And your orator shows that the furnishing of said statements to and demands of your orator upon said assessors and the complaints of your orator against said assessments and all of your orator's actions in respect thereto have been at all times under the protest and exception that said real estate and property and capital and shares of stock were wholly exempt from taxation, State, parish, or municipal, as claimed in the bill; that said statements, demands, complaints, and actions of your orator in respect to said assessments under said protest and exemption *was* constrained under the order of this court directing said assessments pending the suit and without the least prejudice to your orator's rights and only to exhibit the method and measure of said assessments required by said legislative acts to be pursued if said real estate, property, and shares were liable to be assessed at all, and they are not; and your orator claims the full protection of said exemption and of the decree already made as well as the final decree to be made upon the original bill, and no other effect than subject to all the grounds of relief in the original bill and the supplemental bills and the final decree to be rendered is to be given said supplemental assessments, and
46 this bill is filed to show that said supplemental assessment-rolls are void and null, even if said real estate and shares were liable to any assessment, which is denied.

Wherefore your orator, reserving the benefit of and insisting upon all the grounds for relief exhibited in the original bill, and with the leave of this court, now files this supplemental bill and prays for process to defendants to answer thereto, and after due proceedings that the decree be rendered as prayed for in the original bill, and

that it be further ordered, adjudged, and decreed that said supplemental assessments and supplemental rolls and the filing thereof in the office of the recorder of mortgages be decreed to be void and null, and for general relief.

(Signed) HENRY C. MILLER,
Sol. for Compl's.

Order.

Let this supplemental bill be filed.

(Signed) EDWARD C. BILLINGS, *Judge.*

New Orleans, Feb'y 11, 1893.

George W. Nott, being duly sworn, deposes that all the allegations contained in the foregoing supplemental bill, in so far as they are stated upon affiant's own knowledge, are true, and all those stated upon the information of others he believes to be true.

(Signed) G. W. NOTT, *Pres't.*

Sworn to and subscribed before me, notary, at New Orleans, Louisiana, this tenth day of February, A. D. eighteen hundred and ninety-three.

[SEAL.] (Signed) EDGAR GRIMA, *Not. Pub.*

47 *Supplemental Bill.*

Filed March 1, 1893.

To the honorable the circuit court of the United States in and for the fifth circuit and eastern district of Louisiana:

Your orator, The Citizens' Bank of Louisiana, exhibits this its supplemental bill in the suit of The Citizens' Bank *vs.* The Board of Assessors *et als.*, No. — of the docket of this court, and your orator complains and says—

That J. H. Slaughter, J. V. Jones, C. T. Cade, A. A. Browne, William L. Langridge, P. E. Lorio, C. V. Thibaut, E. C. Beuker, E. E. Nunez, Lewis Ory, J. H. Womack, A. W. Connely, John H. Clack, defendants herein, *being* respectively sheriffs of the parishes as follows, to wit: East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, La Fourche, Plaquemines, Pointe Coupée, St. Bernard, St. Charles, St. Helena, Terrebonne, West Feliciana.

And thereupon your orator complains and says that your orator is the owner of property in the above-named parishes, all in the eastern district of Louisiana and within the jurisdiction of this court.

That by the act No. 106 of 1890 the office of assessor was created for each of said parishes, with power to assess for the State and parish taxation all the property belonging to banks, corporations, and individuals, and the sheriffs, one for each of said parishes, are directed to enforce payment of said taxes so assessed by the seizure and sale of the property on which said taxes are assessed,

and now your orator shows that, notwithstanding the complaint and against the protest of your orator that its property is not subject to taxation, but is exempt from all taxation, State, parish, or municipal, said assessors, under color of said act No. 106 of 1890 and of 1880 and of the articles in the State constitution referred to in the original bill, avow their purpose and
48 are about to assess and in certain of said parishes have already assessed for State and parish taxes the property of your orator in said parishes and have avowed their purpose and are about to record and have already recorded said assessments in certain of said parishes in the office of the parish recorder of the parish in which the property aforesaid is situated, so as to cloud the title of your orator with an asserted lien arising from said assessment, and the taxes so assessed exceed, exclusive of interest and costs, two thousand dollars, and all of which is more fully shown by the exhibit herewith filed exhibiting the property of your orator and the value thereof in said parishes on which said assessors claim to be entitled to levy said illegal taxes, and your orator shows that the sheriffs of said parishes, claiming to act under color of said act of 1890 and other acts and the articles of the State constitution aforesaid and against the remonstrances and protest of your orator that its property is not liable to taxation and is exempt under its charter, now avow their purpose and are about to seize and sell the aforesaid property of your orator for the payment of said illegal taxes, and your orator shows that, as set forth in the original bill, its charter and all the immunities and privileges, including the aforesaid exemption from taxation until 1911 of the capital, property, and shares of stock of your orator, constitutes a contract between the State, stipulating for itself, as well as for each of the aforesaid parishes and the local government thereof, and your orator and its shareholders, and said contract is protected by the Constitution of the United States from any change or impairment, whether in the form of provisions inserted in the State constitution or by legislative acts; that each of said articles of the constitution and of said legislative acts under which the defendants herein named claim to act, in so far as
49 they or any of them purport or tend to authorize the assessment and taxation of the capital, property, or shares of stock of your orator, are each and all void and of no effect because violative of and repugnant to section 10 of article 1st of the Constitution of the United States, prohibiting all legislation impairing the obligations of contracts, and under this protection of the Constitution of the United States your orator is entitled to relief to prevent the aforesaid unlawful assessment and taxation and seizure and sale of your orator's property to pay said illegal taxes.

To the end, therefore, that the aforesaid sheriffs, defendants named in this supplemental bill, may be enjoined and prohibited from enforcing the payment of said taxes based upon said assessments and from seizing and selling your orator's property for the payment of said illegal taxes, and to the end that the injunction herein asked be decreed to be perpetual, as well *as* against the defendants named herein as against the defendants named in the original

bill, and that the aforesaid articles of the State constitution and laws, under color of which defendants are acting, may be decreed to be inoperative and void so far as they undertake to direct the assessment and taxation of the aforesaid property of your orator, and that all said assessments may be decreed to be illegal and of no effect, and that the inscriptions thereof in the office of the parish recorder of mortgages be decreed and ordered to be cancelled and erased, and that the aforesaid exemption from taxation of said property may be recognized and adjudged to be valid to the full extent herein set forth—

May it please your honors to allow the filing of this supplemental bill and to grant the writ of subpœna directed to the defendants named herein, to wit, J. H. Slaughter, J. V. Jones, C. T. Cade, A. A. Browne, William L. Langridge, P. E. Lorio, C. V.
50 Thibaut, E. C. Benker, E. E. Nunez, Lewis Ory, J. H. Womack, A. W. Connely, John H. Clack, respectively the sheriffs of the parishes in the eastern district of Louisiana, commanding them to be and appear in this court on the day named in the process, to stand to and abide all decrees that may be rendered herein, and for general relief.

(Signed) HENRY C. MILLER,
HENRY DENIS,
Sol's for Compl't.

Hypolite Laroussini, vice and acting president of the Citizens' Bank of Louisiana, being duly sworn, deposes and says that the allegations contained in the foregoing bill in so far as they are——

Let this supplemental bill be filed, and let the defendants show cause on Saturday, March 11, 1893, at 11 o'clock a. m., why an injunction *pendente lite* should not issue as prayed for, and in the meantime and until the hearing and decision of the motion for an injunction let a restraining order issue restraining defendants according to the prayer of this bill.

(Signed) EDWARD C. BILLINGS, *Judge.*

March 1, 1893.

Demurrer and Answer of City of New Orleans.

Filed May 29, 1893.

CITIZENS' BANK OF LOUISIANA *vs.* BOARD OF ASSESSORS *et als.* } No. 12112. United States Circuit Court, Eastern District of Louisiana.

51 The demurrer of The City of New Orleans (one of the defendants herein) to part and the answer of the said defendant, The City of New Orleans, to the residue of the supplemental bill of complaint of The Citizens' Bank of Louisiana, plaintiff herein.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's supple-

mental bill contained to be true in such manner and form as the same are therein set forth and alleged, as to so much and such part of said supplemental bill as seeks to have the supplemental assessments and supplemental assessment-rolls therein mentioned and the filing thereof in the office of the recorder of mortgages for the parish of Orleans, State of Louisiana, decreed to be void and null because of the manner and amount of said supplemental assessment or of any item thereof, or because of any apprehended method or methods to enforce the payment of taxes based on said supplemental assessments, or because of the place where the said supplemental assessments were made, or because of any reason whatever set forth in said supplemental bill beyond the pretension asserted by plaintiffs of an alleged impairment of an alleged contract with the State of Louisiana for exemption from taxation as urged in plaintiff's original bill in this case, doth demur and for cause of demurrer doth show that, plaintiff and this defendant being citizens of the State of Louisiana, this honorable court is without jurisdiction to consider or determine the matters set forth in said supplemental bill attacking the validity of the said supplemental assessments, said supplemental assessment-rolls, and the said filing thereof, except in so far as the issue of the impairment of the obligation of a contract may be involved, and that with the exception of the issue of the impairment of said alleged contract, as aforesaid, the courts of the State of Louisiana are
52 the only courts having jurisdiction over the matters set out in complainant's said supplemental bill as causes of the invalidity of said supplemental assessments and said supplemental assessment-rolls and of the filing thereof in the office of the recorder of mortgages for the parish of Orleans, State of Louisiana.

Wherefore, and for divers other good causes of demurrer appearing in the said supplemental bill, this defendant prays the judgment of this honorable court whether it shall be compelled to make any answer to such parts of the said bill as it has hereinbefore demurred to.

And said defendant, The City of New Orleans, not waiving its said demurrer, but wholly relying and insisting thereon, as to the residue of said bill or such part thereof as it is advised is material or necessary for it to make answer unto, doth answer and say that assessments against complainant have been made for the years 1889, 1890, 1891, and 1892 by the board of assessors for the parish of Orleans against property of plaintiff in said parish of Orleans, State of Louisiana, and against the shares in the capital stock of plaintiff, and that defendant admits that the said assessments for the said years are as follows, to wit: For the year 1889, on the shares of stock, $15.88 per share, and on the property $70,000.00; for the year 1890, on the shares of stock, $14.58 per share, and on the property, $70,000.00; for the year 1891, on the shares of stock, $90.91 per share, and on the property $70,000.00; for the year 1892, on the shares of stock, $89.58 per share, and on the property $70,000.00; and this defendant is informed and believes that said supplemental assessment-rolls have been filed for record in the office of the recorder of mortgages for said parish of Orleans.

And this defendant, further answering, says that it denies that plaintiff is entitled to exemption from taxation; and this defendant avers that the property of plaintiff and the shares in its
53 capital stock are liable to taxation for the reasons set forth in the answer already filed herein by this defendant to the original bill of plaintiff; which answer this defendant adopts and makes part of this present answer as if herein particularly repeated.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said supplemental bill charged; without this, that there is any other matter, cause, or thing in the said complainant's said supplemental bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge and belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

[SEAL.] (Signed) JOHN FITZPATRICK,
Mayor City of New Orleans.

(Signed) E. A. O'SULLIVAN,
City Att'y,

H'Y RENSHAW,
Assistant City Att'y,
Solicitors for the Defendant The City of New Orleans.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

(Signed) E. A. O'SULLIVAN,
City Att'y, of Counsel.

John Fitzpatrick, mayor of the city of New Orleans, being duly sworn, deposes and says that the foregoing demurrer is not
54 interposed for delay.

(Signed) JOHN FITZPATRICK, *Mayor.*

Sworn to and subscribed before me this 23rd day of May, 1893.

[SEAL.] (Signed) CAS. H. SHIELDS, *Not. Pub.*

John Fitzpatrick, mayor of the city of New Orleans, being duly sworn, deposes and says that he has read the foregoing answer and signed the same and knows the contents thereof to be true of his own knowledge, except as to the matters therein stated to be on his information and belief, and as to those matters he believes them to be true.

(Signed) JOHN FITZPATRICK, *Mayor.*

Sworn to and subscribed before me this 23rd day of May, 1893.

[SEAL.] (Signed) CAS. H. SHIELDS, *Not. Pub.*

Demurrer and Answer of Board of Assessors, State Tax-collectors, and Sheriffs to Supplemental Bills and Original Bill.

Filed June 3, 1893.

CITIZENS' BANK OF LOUISIANA *versus* BOARD OF ASSESSORS *et als.* } No. 12112. United States Circuit Court, Eastern District of Louisiana.

The demurrer of the Board of Assessors of the Parish of
55 Orleans, and of C. Harrison Parker, Henry Guillotte, H. D. Monnier, and W. T. Patton, respectively State tax-collectors of the 1st, 2nd, 3rd, and 4th districts of the parish of Orleans, and J. H. Slaughter, J. V. Jones, C. T. Cade, A. A. Browne, William L. Langridge, P. E. Lorio, C. V. Thibaut, E. C. Beuker, E. E. Nunez, Lewis Ory, J. H. Womack, A. M. Connely, John H. Clack, respectively sheriffs of the following parishes, to wit, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, La Fourche, Plaquemines, Pointe Coupée, Saint Bernard, Saint Charles, Saint Helena, Terrebonne, West Feliciana, defendants herein, to the bill and supplemental bills of complaint of The Citizens' Bank, plaintiff; to part of complaint filed herein; answers of said defendants, Board of Assessors of the Parish of Orleans, and of C. Harrison Parker, Henry Guillotte, H. D. Monnier, and W. T. Patton, respectively State tax-collectors of the 1st, 2nd, 3rd, and 4th districts of the parish of Orleans, and J. H. Slaughter, J. V. Jones, C. T. Cade, A. A. Browne, William L. Langridge, P. E. Lorio, C. V. Thibaut, E. C. Beuker, E. E. Nunez, Lewis Ory, J. H. Womack, A. M. Connely, John H. Clack, respectively sheriffs of the following parishes, to wit, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, La Fourche, Plaquemines, Pointe Coupée, Saint Bernard, Saint Charles, Saint Helena, Terrebonne, and West Feliciana, to the supplemental bills of complaint and the original bill of complaint of The Citizens' Bank of Louisiana, plaintiff herein.

These defendants respectfully, now and at all times hereafter saving to themselves any and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bills contained, for demurrer and answer thereto or to so much thereof as
these defendants are advised it is material or necessary for
56 them to demur or to make answer to, and specially reserving the benefit of the demurrer herein previously filed by C. Harrison Parker, Henry Guillotte, Henry D. Monnier, and W. T. Patton, and answering because the same is overruled, respectfully say:

These defendants adopt as their demurrer the demurrer herein filed by the City of New Orleans to the supplemental bill of complaint, and they adopt as part of their answers the entire answer filed by the City of New Orleans and the Board of Assessors of the Parish of Orleans to the original bill of complaint, and also the answer of the City of New Orleans to the supplemental bills of complainant.

Further answering, these defendants show that they are informed and believe, and therefore aver, that at the time the Citizens' bank was granted its charter in 1833 and 1836 and for a long time subsequent thereto there were no levee taxes imposed by the State legislature for the protection of property from overflow; that since then a State levee tax has been imposed and levee districts have been created by the legislature in all the alluvial parishes, with power to levee taxes and force contributions for the purpose of protecting property from destruction by overflow; that all levee taxes and contributions are expended for the purpose of protecting complainant's property, in common with other property subject to overflow, and complainants is legally and equitably bound for this tax expended for the purpose of protecting its property, all of which is situated in the alluvial districts subject to overflow, which levee taxes and contributions are imposed for the special benefit and improvement of such property, and was not contemplated and included in the exemption, if any, granted by the legislature to complainant.

Defendants, further answering, show that they are informed
57 and believe, and therefore aver, that from the time of the granting of complainant's charter, and particularly from 1880 up to 1892, complainant voluntarily and without protest or objection, except as to valuation, submitted and listed its property for taxation in the several parishes throughout the State; that it has voluntarily and without objection paid all taxes assessed against it throughout the State up to and including the year 1891, and in the parishes of East Baton Rouge and La Fourche also for the year 1892; that therefore complainant is without cause of action except for the taxes of 1892 in those parishes where they have not been paid; that complainant's right to claim exemption from taxation, if it ever existed, which is denied, has been lost by this long acquiescence in the claim and exercise by the State levee districts and parishes of the right to tax; that the payment by complainant of its taxes since 1880 shows its relinquishment of all claim for its exemption, if any existed, which is denied, in accordance with the terms of act No. 79 of 1880.

Defendants, further answering, show that they are informed and believe, and therefore aver, that under section- 56 and 57, page 120, of act No. 106 of 1890 they are entitled to recover from complainant, as costs to be collected with the taxes, ten per cent. (10 %) commission upon all taxes, State, levee, district, and parish, due by complainant, as attorneys' fee for the defence of this suit.

Wherefore defendants pray that complainant's bill be dismissed and its demand rejected at its costs, including the attorneys' fees of ten per cent. (10 %) on the amount of taxes due and unpaid, which defendants pray to have taxes as part of the costs herein.

And for general relief.

(Signed) M. J. CUNNINGHAM,
Attorney General,

58 R. LYONS,
Att'y of State Tax-collectors,
Solicitors for Defendants.

United States Circuit Court, Eastern District of Louisiana.

CLERK'S OFFICE.

I certify the foregoing to be a true copy of the original bill of complaint, answer of the board of assessors and of the city of New Orleans, supplemental bill, 2nd supplemental bill, demurrer and answer of the city of New Orleans, and demurrer and answer of board of assessors, State tax-collectors, and sheriffs of various parishes in the case entitled The Citizens' Bank of Louisiana *vs.* Board of Assessors for the Parish of Orleans *et als.*, No. 12112 of the docket of this court.

Witness my hand and seal of said court, at the city of New Orleans, this 13th day of March, 1895.

E. R. HUNT, *Clerk.*

Copy of Bill of Complaint and Answer.

United States Circuit Court, Eastern District of Louisiana.

THE CITIZENS' BANK OF LOUISIANA
vs.
THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS, SHERIFFS, ETC. } No. 12204.

To the honorable the circuit court of the United States in and for the fifth circuit and eastern district of Louisiana:

59 The Citizens' Bank of Louisiana, a banking corporation created by the legislature of Louisiana, doing business in the city of New Orleans, there domiciled and a citizen of Louisiana, exhibits this its bill of complaint in the suit or cause of action arising under the Constitution of the United States against John M. Gleason, Hypolite Garrot, Thomas P. Hawthorn, Edward R. Skinner, John Reaney, Henry B. McMurray, Thomas W. Castleman, constituting the board of assessors for the parish of Orleans, and against C. Harrison Parker, State tax-collector of the first municipal district; Henry Guillotte, State tax-collector of the second municipal district; and J. H. Slaughter, J. V. Jones, C. T. Cade, A. A. Browne, William L. Langridge, P. E. Lorio, C. V. Thibaut, E. C. Beuker, E. E. Nunez, Lewis Ory, J. H. Womack, A. W. Counely, John H. Clack, being respectively as named sheriffs of the parishes as follows, to wit, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, La Fourche, Plaquemines, Pointe Coupée, St. Bernard, St. Charles, St. Helena, Terrebonne, West Feliciana, and against the City of New Orleans; and thereupon your orator complains and avers—

That your orator was incorporated in 1833 in aid of the policy of the State to provide for the development of the planting interest by creating banks with capital obtained abroad by negotiating the bonds of the State and to be loaned in the mode hereinafter stated to planters contemplated to become stockholders in such banks, and in consideration of the organization of your orator for this public purpose and of the credit with your orator to be enjoyed by the

State and of its participation in the profits anticipated from this system of banking, all secured to the State in the charter, your orator was incorporated to do a banking business and fulfill the
60 object of the charter, and the State conferred upon it all the privileges and immunities essential to the corporate purpose, including the exemption of all the capital and property of your orator from all taxation—State, parish, or municipal.

That the charter fixed the capital of your orator at fourteen million four hundred thousand dollars, in shares of one hundred dollars each, to be secured by mortgage on the property of the stockholders, and the funds procured by the negotiation of the bonds of the State were to be loaned to the stockholders on the pledge only of their stock not paid for, but secured by said mortgages, and the loans were payable in installments at intervals running through forty-nine years; that the stock mortgages had no term prescribed for their payment, and it was not until 1873, forty years after the date of the charter, that the legislature authorized annual calls on the stockholders of two dollars per share, and these stock-subscription debts and mortgages to be realized in the protracted method and in the long period indicated by the act No. 45 of 1873, during which the existence of the bank under its charter was necessarily implied and recognized by the original charter as well as by the act of 1873, were to be enforced by the bank for the benefit of the bondholders to whom the mortgages were assigned as the provisions for payment of the bonds, and the charter declared that this pledge of the mortgages should be "perpetual" until the full payment of the bonds in principal and interest, and the bank, under its charter, was to enforce this perpetual pledge.

That this charter granted under the constitution of 1812 was subject by that instrument to no time limitation whatever as to time or prolongation; that from the nature of the functions of the bank in respect to the bond debt and the forty-nine years' loans to the stockholders of the money procured from the bondholders and enforcing for the payment of the bonds stock mortgages to be "perpetual"
61 and to be realized only by the methods already stated, and other provisions of the charter, and especially the large pecuniary interest of the State in maintaining the existence of the bank to accomplish the payment of the bonds, it is manifest that while fifty-one years was named in the charter, it was clearly the legislative purpose that the existence of the bank under its charter carried the right of prolongation for the interest of the State itself, the bondholders, and the bank, all concerned in the performance of the functions imposed on the bank, and this right of prolongation beyond the said fifty-one years is thus to be deemed affirmed by the charter itself of 1833 and 1836, and your orator shows that the legislation of the State has been at all times in accordance with the character of this charter, as herein set forth, and in addition to the provisions already referred to of the charter itself, and in the same connection your orator refers to the legislation of 1842, prohibiting the bank from going into liquidation, and the legislation of 1880, seven years after act of 1873, authorizing the long annual calls on

shareholders, directing the bank to make compromises with the shareholders, and finally to the legislation of 1874, enacted to protect the State against the bond debt and to accomplish the object of the charter of 1833 and 1836, by which the legislature enacted that the charter of the Citizens' bank should be prolonged to 1911, thus continuing to that date the charter with all its immunities, including said exemption from taxation, the preamble and first section of which act, referring to the prolongation of the charter, is herewith incorporated, to wit:

Whereas, by reason of the great loss suffered by the agricultural interest of the State, in consequence of the late war, it would be ruinous for the stockholders to pay, within the next thirteen
62 years, before the limitation of the charter of the Citizens' Bank of Louisiana, the amount of arreared installments and interest due by them, as well as the balance of their indebtedness; and

Whereas, the sacrifice of the lands mortgaged for the payment of the State bonds issued in favor of the bank would endanger the security of the State; and

Whereas, it is the interest of the State that a prolongation of the charter of the Citizens' Bank of Louisiana be allowed, so as to enable said institution to collect the debts due by the stockholders, and thereby facilitate the payment of the State bonds.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana, in General Assembly convened, That the provision of the thirtieth section of the act entitled An act to incorporate the Citizens' Bank of Louisiana, approved April 1, 1833, which reads as follows:

"And the charter shall continue for and during the space of fifty-one years from the passage hereof" be amended and re-enacted as follows: "That the charter of the Citizens' Bank of Louisiana shall continue for and during the space of twenty-five years from and after the time fixed for its liquidation by said charter, and shall expire on the 30th January, 1911," and to all such acts incorporating the bank and others, to wit, the act of 18th April, 1833, incorporating the bank; the amendatory act of 30th January, 1836; act No. 88 of 1842, the act No. 45 of 1873, and the act No. 40 of 1874 special reference is made, and your orator prays that the same be taken as a part of this bill.

That this charter of the Citizens' bank, with its stipulations in favor of the State and with the power of promulgation as stated, was accepted by the bank, and on the faith of its provisions,
63 including said exemption from taxation of the bank, its capital and property, fourteen millions four hundred thousands of dollars were subscribed to the capital stock of the bank, and in the same faith the bank has acquired and now holds property necessary for its purposes and acquired in the course of its business of value greater than five thousand dollars; that with the same reliance on said charter the bonds of the State to the amount of seven millions of dollars were negotiated abroad, and all the proceeds of said bonds were loaned by the bank on the security of

the stock mortgages to its shareholders, mainly planters, and applied to promote the planting interest as proposed by the charter.

That the act of 1833 provided for the issue of the bonds of the bank to raise its capital, but the act failed, and it was under the act of 1836 that the State bonds were negotiated and the money of the bondholders to the large amount stated was obtained on the faith of that act, which explicitly repeated the exemption from taxation of the bank and its capital and property and pledged to the bondholders the instrumentality of the bank to enforce for their benefit the aforesaid stock mortgages until the said bonds in their entirety should be fully paid in principal and interest.

And further your orator shows in 1853, when the financial reverses preceeding that year had led to the default of the bank in paying interest on the bonds and to the forfeiture of its charter, the said bond debt then being upward of six millions of dollars, the legislature, realizing and in the view of guarding against the consequent danger of loss to the State, invited and authorized the furnishing of one million of dollars fresh capital for the Citizens' bank, and the capital was obtained on the faith of the State restoring the charter with all its immunities, including the aforesaid ex-
64 emption, evidenced by the acts of the legislature No. 141 of 1852, No. 246 of 1853, and article 121 of the constitution of 1852; to all of which reference is also made.

That of the aforesaid bonds of the State upward of four millions of dollars are still extant, unpaid, in the hands of holders for value, and that the aforesaid stock mortgages not yet realized and other assets pledged for the charter and for the bond debt to be administered, realized, and applied by the bank to that debt amounts to upward of five hundred thousand dollars.

That articles 203, 234, and 237 of the constitution of Louisiana of 1879 declare that there shall be no exemption from taxation save of church, school property, and of capital employed in manufactures of a certain class and other enumerated kinds of property, and that no corporation shall engage in any business except that specified in its charter or hold real estate longer than ten years, and that no charter of any corporation shall be altered or amended except subject to the provisions of said constitution; and in the year 1880, the aforesaid bond indebtedness of the State then subsisting to a large amount, say upward of four millions of dollars, the State, by the act No. 79 of 1880, in its own interest and for its protection against said indebtedness, authorized compromises with the mortgage stockholders of the bank in order to realize from said compromises the means to pay said indebtedness of the State, and said act undertook to require your orator to accept said act under the conditions of articles 234 and 237 of the State constitution, and said acceptance was given in order to carry into effect said compromises; and your orator further shows that on the 9th July, 1890, the legislature of Louisiana passed two certain acts, designated as No. 106 and No. 150 of the Session Acts of that year, directing the assessment and taxation of the property and the shares of
65 stock of all banking corporations, and also imposing an

annual license tax on all such corporations, and to effect said taxation appointed assessors, one in each parish of the State, to assess the taxes for the State and the parishes other than Orleans, and created a board of assessors to assess such property and stock for taxation by the State and city of New Orleans, and conferred upon said board of assessors the power to call upon the banks and other corporations for the return of their property and shares of the capital stock and a list of their shareholders in order to enable said board of assessors to assess said taxes, and subsequently the council of the city of New Orleans, by its ordinance No. 7047, directed the levy of taxes for the city of New Orleans for the year 1893 on the property and shares of stock of such banking corporations, and by another ordinance, of date — of said council, No. —, imposed a license tax upon all such corporations.

And now your orator further shows that its domicil is in the first tax-collection district of this city, and it is the owner of property in the first and second collection districts of this city created by the legislature of Louisiana, No. 69 of 1892; that under color of the said articles of the State constitution hereinbefore set forth, and of said legislative act of 1880, and of said legislative acts of 1890, and of said ordinances of the council the said board of assessors for the parish of Orleans and the assessors and sheriffs of the parishes aforesaid within this judicial district, to wit, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, La Fourche, Plaquemines, Pointe Coupée, St. Bernard, St. Charles, St. Helena, Terrebonne, West Feliciana, in all of which parishes your orator is the owner of property, now undertake to assert that your orator is no longer entitled to the aforesaid exemption from taxation conferred by its charter, recognized by the legislation of the State, and also, as will be shown, by the courts of
66 this State; but, on the contrary, the said assessors for the parishes aforesaid and the said board of assessors for the parish of Orleans, avowing their purpose to deny to your orator the benefit of its said exemption and against the protest of your orator that it is subject to no taxation of any kind whatever by the city, by the State, or by the parishes of the State, being protected against any such taxation by the exemption aforesaid, have, notwithstanding said protest, assessed the capital, property, and shares of stock of your orator for taxation by the State of Louisiana as well as for the local governments of said parishes and for taxation by the city of New Orleans for the year 1893, and avow their purpose to continue to make said assessments for future years, and the said taxes thus assesssed upon the property of your orator in the said parishes, not including the parish of Orleans, exceed in amount six thousand dollars, and the amount of said taxes upon the capital, property, and shares of stock of your orator *have* been assessed by said board of assessors for taxation by the city of New Orleans to an amount in excess of six thousand dollars; and your orator further shows that the said collectors for the first and second tax-collection districts of the city of New Orleans and the said city of New Orleans demand the payment by your orator of the aforesaid license tax—one

for the State and the other for the city of New Orleans; and, further, your orator shows that, unless prevented by the process of this court, the said assessors for the parishes, not including the parish of Orleans, and the said board of assessors for the parish of Orleans will record said assessments upon the property, capital, and shares of stock of your orator in the mortgage office of the parish of Orleans and in the offices of the clerks of the courts of said parishes other than the parish of Orleans, thus casting a cloud upon
67 the business, property, and shares of stock aforesaid, and thereby seriously depreciating the value thereof; and your orator further shows that the said sheriffs of the parishes other than the parish of Orleans charged by the aforesaid act No. 106 of 1890 with the collection of taxes claimed by the State and by the parishes and the said tax-collectors for the said collection districts of the city of New Orleans and the city of New Orleans, through its collecting officer, will enforce payment of the taxes based on said assessments and will enforce or attempt to enforce the payment of said license taxes imposed upon your orator under color of the aforesaid acts and ordinances and will seize and sell the property of your orator and the shares of its stock to compel payment of said illegal taxes and licenses, all to the great prejudice, damage, and injury of your orator, and said damage and injury will largely exceed in amount six thousand dollars.

Your orator, further complaining, shows that both before and since the constitution of 1879 and the enactment of the laws aforesaid under color of which the said assessors, sheriffs, tax-collectors, and the city of New Orleans now pretend to find the warrant for said assessment and taxes of your orator's capital, property, and stock that said exemption conferred by your orator's charter has been of constant recognition by the State and city; and, further complaining, your orator shows that on the 25th of June, 1878, suit was instituted in the civil district court for the parish of Orleans to enforce payment of taxes to the city of New Orleans and State of Louisiana based on the assessment of the property and shares of stock, and your orator resisted the suit on the ground of the exemption from taxation conferred by its charter; that on that issue it was adjudged by the supreme court of the State as well as by the district court that said assessments were void, and that your orator was not subject to taxation on its capital, property, or shares of stock, as
68 more fully appears by said suit and the judgment of the supreme court therein rendered on the 9th of July, 1880, reported in the 32d Louisiana Annual, page 239; and, further, your orator shows that in two suits brought subsequently by your orator in the civil district court for the parish of Orleans to prohibit the assessment and taxation by the State and city — orator's capital, property, and shares of stock the aforesaid exemption was again sustained and said assessment of taxation decreed void and enjoined and prohibited, one of said suits having been brought on 5th November, 1884, and the other on 21st March, 1887, and decided respectively on November 5th, 1886, and 27th April, 1887, and by the decree of this court in the suit of The Citizens' Bank *vs.* The

Board of Assessors, No. — of the docket, this court, on the rule for an injunction, recognized — maintained said exemption, all of which appears by copies of said decrees herein filed and to which reference is made; and your orator shows the present attempt to make assessments against your orator and against its shareholders is in defiance of its charter and of the decisions of the courts of Louisiana; and your orator avers and pleads said final decrees of the supreme court and district court as *res judicata* on the issue herein, and avers said decisions conclude the said board and the city of New Orleans and the State and its assessors and sheriffs from making any assessment of orator's capital, property, or shares of stock or enforcing the collection of any taxes based on such assessments or payment of any licenses from your orator.

And, further complaining, your orator shows that the aforesaid legislative act No. 40 of 1874, continuing the charter of your orator, with all privileges and immunities, including said exemption, until 1911, was a competent and necessary exercise of legislative power, in harmony with and fulfillment of the object of the charter itself, granted in 1833, has stood on the statute books for nearly twenty years unassailed and in full force, and is binding on the State
69 and city of New Orleans, and especially upon its executive officers, who, of their volition, without any judicial warrant, propose now to disregard the charter of your orator and the said act of 1874.

And your orator shows that its charter and all the immunities and privileges thereof, including the aforesaid exemption from any and all taxation, whether on its capital, property, or shares or in the form of license taxes, constitutes a contract between the State, stipulating for itself and for each parish of the State and for the city, and your orator and its shareholders, and said contract is protected by the Constitution of the United States from any change or impairment, whether attempted in the form of provisions inserted in the State constitution or by legislative acts or by ordinances of the council of the city of New Orleans; and each and all of said articles 203, 234, and 237 and any and all others that may be claimed to authorize the aforesaid assessments against your orator and the taxation of any property or capital or shares or to authorize the imposition of any license taxes upon your orator and the said acts of the legislature of Louisiana No. 79 of 1880 and Nos. 106 and 150 of 1890 and any other legislative acts that may be relied on to countenance the action of said assessors for the parishes other than the parish of Orleans and of the board of assessors and said sheriff and the said ordinances of the council of the city of New Orleans Nos. —, approved respectively —, in so far as any of them purport or tend to authorize such assessments and taxation of the capital or property or shares of stock of your orator or the imposition of any license taxes on your orator, are each and all void and of no effect because violative of and repugnant to the tenth section of article 1 of the Constitution of the United States, prohibiting all legislation
70 impairing the obligations of contracts, and under this protection of the Constitution of the United States your orator

is entitled to relief in this court to have annulled the aforesaid assessments and to have enjoined and prohibited the attempts of said defendants to enforce payment of the aforesaid taxes assessed upon the capital, property, and shares of stock of your orator and to prohibit and enjoin the collection of said license taxes.

To the end, therefore, that the said defendants, the assessors in each of the aforesaid-named parishes and The Board of Assessors of the Parish of Orleans, may be enjoined and prohibited from persisting in the said assessments for taxation by the city of New Orleans or by the aforesaid parishes or by the State of Louisiana for the year 1893 or for future years of the capital or property or shares of the capital stock of your orator or from recording the same in office of the clerks of courts of said parishes, except the parish of Orleans, and in the office of the recorder of mortgages for the parish of Orleans, and that the said sheriffs of the aforesaid parishes, except the parish of Orleans, and the State tax-collectors of the first and second collection districts and the city of New Orleans and its officers may be enjoined and prohibited from demanding or enforcing payment of any such taxes on the property, capital, or shares of stock of your orator based on said assessments or on any such assessments that may be attempted in the future and from seizing and selling the property or said shares of stock or any part thereof for the payment of said taxes, *and* may it please your honors to grant unto your orator the writs of injunction directed to the said assessors and to the said Board of Assessors and to the said sheriffs and to the said State tax-collectors and to the said City of New Orleans, enjoining them and each of them to the full extent prayed by this bill, and that said injunctions may be decreed to be perpetual, and that the aforesaid assessments may be decreed to be null, void, and of
71 no effect, and if recorded in the offices aforesaid that the registry of said assessments be decreed to be erased and cancelled, and that the aforesaid articles of the constitution and laws and ordinances of the city council under color of which defendants are acting may be decreed to be null and void so far as they undertake to authorize the assessments of taxation of the capital or property or shares of stock of your orator, and that the aforesaid exemption from taxation of your orator conferred by its charter of its capital, property, and shares of stock may be recognized and adjudged to be valid, and that it may be decreed that your orator is not subject to any license tax, and that the aforesaid State tax-collectors of the tax-collection districts of the parish of Orleans and the said city of New Orleans may be enjoined and prohibited from demanding or enforcing the payment by your orator of any and all license taxes, whether for 1893 or of other years, past or future, and that the writs of injunction to restrain the enforcement of said license taxes issue accordingly to said defendants, and that until the hearing of this bill that a restraining order issue to the full extent prayed for by this bill, and that your orator may have such other and further relief as the nature of the case may require and equity will authorize.

May it please your honors to grant to your orator the writ of

subpœna directed to the said sheriffs of the hereinabove-named parishes, to wit, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, La Fourche, Plaquemines, Pointe Coupée, St. Bernard, St. Charles, St. Helena, Terrebonne, West Feliciana, and to the assessors of said parishes and to the Board of Assessors for the Parish of Orleans and to the aforesaid State tax-collectors of the first and second tax-collection districts of New Orleans and to the City of New Orleans, commanding them to be and appear in this court on the day to be named in the process and there to stand to and abide all decrees that may be rendered herein, and for general relief.

72 (Signed) HENRY C. MILLER,
Sol'r for Compl't.
HENRY DENIS, *Of Counsel.*

George W. Nott, president of the Citizens' Bank of Louisiana, being duly sworn, deposes and says that the allegations contained in the foregoing bill are true so far as they are stated of affiant's knowledge, and in so far as they are stated on the information of others affiant believes them to be true.

(Signed) G. W. NOTT.

Sworn to and subscribed before me, notary, at New Orleans, Louisiana, on this 13th day of June, A. D. 1893.

[SEAL.] (Signed) EDGAR GRIMA, *Not. Pub.*

(Bill filed June 14, 1893.)

Order.

Let this bill of complaint be filed, and considering the allegations thereof let the defendants show cause on Wednesday, the twenty-first day of June, 1893, at 11 a. m., why the injunction therein prayed for should not issue, and let a restraining order issue meanwhile and until the hearing and decision upon this application restraining the defendants from making any assessment, and from attempting to collect the same, of any tax upon the capital or property of the complainant acquired by virtue of the act "to incorporate the Citizens' Bank of Louisiana," approved April 1, 1833, and from all steps towards collecting any tax upon the
73 shares of the capital stock of the complainant beyond the obtaining of the returns or list of the shareholders requisit- for the assessment of taxes upon the shares and beyond the assessment of the tax.

(Signed) EDWARD C. BILLINGS, *Judge.*

June 14, 1893.

Answer.

Filed Jan'y 29, 1894.

CITIZENS' BANK OF LOUISIANA *vs.* BOARD OF ASSESSORS. } No. 12204. United States Circuit Court, Eastern District of Louisiana.

The joint and several answers of the Board of Assessors of the Parish of Orleans and of C. Harrison Parker, Henry Guillotte, H. D. Monnier, and W. T. Patton, respectively State tax-collectors of the 1st, 2nd, 3rd, & 4th districts of the parish of Orleans, and J. H. Slaughter, J. V. Jones, C. T. Cade, A. A. Browne, William L. Langridge, P. E. Lorio, C. V. Thibaut, E. C. Beuker, E. E. Nunez, Lewis Ory, J. H. Womack, A. M. Connely, John H. Clack, respectively sheriffs of the following parishes, to wit, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, La Fourche, Plaquemines, Pointe Coupée, Saint Bernard, Saint Charles, Saint Helena, Terrebonne, and West Feliciana, to the bill of complaint and the original bill of complaint of The Citizens' Bank of Louisiana, plaintiff herein.

These defendants respectively, now and at all times hereafter, saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill con-
74 tained, for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering, say that in 1833 the legislature of the State of Louisiana passed that act to incorporate the Citizens' Bank of Louisiana for the purposes set forth in said act; that according to said act (section 1) the capital of said bank was to be twelve millions of dollars, to be procured by means of a loan or loans to be made by the directors of said bank, and (section 4) to facilitate the negotiation or obtaining of said loan the directors were authorized and empowered to issue the bonds of the bank, and for the payment of these bonds the mortgages given by the stockholders under said act (section 3) were to be pledged to the holders of said bonds; that the said corporation was invested with the rights and privileges usually accorded to banks (section 10); that the stockholders were entitled to certain credit upon pledge of their stock (section 11); that the bank was empowered to advance money to individuals upon certain conditions (sections 12 and 13), and that the State upon certain conditions (section 11) was to enjoy a credit of at least five hundred thousand dollars.

That by the said statute the said corporation was authorized to subscribe to the stock of the Lake Borgne Navigation Company, and it was also provided (section 14) that the directors of said corporation might succeed to and become vested with all the powers, rights, and privileges granted to the said navigation company, and

the corporation became subject to all the clauses, conditions, stipulations, and limitations whatsoever contained in the charter of said company.

That said corporation was also empowered (section 16) to establish and keep a railroad, to communicate from beyond the line of the Pontchartrain railroad and any point or points between
75 the River Mississippi, the Gentilly and Chef Menteur road, and extending to and in the parish of St. Bernard.

That it was further provided by said act (section 30) that at the expiration of the charter of said corporation, if the corporation should have acquired the rights, privileges, and advantages mentioned in the 14th section of the act, viz., as successor of the Lake Borgne Navigation Company, and should have had quiet enjoyment thereof, it should be the duty of said corporation to deliver to the State all the canals and appurtenances and dependencies mentioned in the 15- and 18th sections of the act of incorporation of said company, and also all roads that may have been made, as well as all the machinery, cars for transportation, and all other dependencies thereon, rights of tolls, and every other privilege attached thereto, which should then become the full property of the State; and it was enacted by said statute that in consideration of said cession, or in lieu thereof the bonds mentioned in the fifteenth section of said act incorporation the Citizens' Bank of Louisiana, the said corporation should during its existence be exempt in its capital and property acquired under said act from all taxes due to the State or to any parish or corporation created by law of this State, and the charter of said corporation was to continue for and during the space of fifty-one years from the passage of said act.

And these defendants pray that said act may be taken as part of this answer.

Further answering, these defendants show that in 1836 the legislature of the State of Louisiana passed an act entitled "An act amendatory and supplementary to the several acts relative to the 'Act to incorporate the Citizens' Bank of Louisiana,'" whereby to facilitate the bank in negotiating the loan of twelve millions
76 of dollars authorized by the act of incorporation of April, 1833, the faith of the State was pledged for the security of said sum or such part thereof as might be required by the bank, and it was enacted as follows: (Section 3.) "That for the guarantee of the bonds to be emitted by the State in favor of the Citizens' bank, and of the interest thereof, and for which the State pledges its faith, all the securities granted by the act of incorporation of said bank, and especially by the third and fourth sections of said act to the holders of its bonds are hereby transferred to the State and the holders of the bonds which may be issued, in virtur of this act;" that by section 7 of said act of 1836 the 14th section of the act to incorporate the Citizens' bank, authorizing subscription to the capital stock of the Lake Borgne Navigation Company; the fifteenth section of said act, fixing a penalty for not digging the canal therein described, and all provision- in said act relative thereto were repealed; that by section 4 of the act of 1836 the State was

declared entitled to a certain interest in the profits of the bank, and the capital of said bank was exempted from any tax laid by the State or by any parish or body politic under the authority of the State during *which* the continuance of its charter.

Further answering, these defendants show that they are informed and believe, and therefore aver, that the effect of this legislation was that whatever exemption may have been granted to the Citizens' Bank of Louisiana was, according to said act of 1836, applicable only to its capital and not all its property, and that such exemption ceased at the expiration of its charter as originally stated, viz., in 1884, or fifty-one years after the passage of the act of incorporation, and these defendants pray that said act of 1836 may be taken as part of this answer.

77 Further answering, these defendants show that, according to article 118 of the constitution of the State of Louisiana of 1868, all property was to be taken in proportion to its value, to be ascertained as directed by law, although the General Assembly was given power to exempt from taxation property "actually used for church, school, or charitable purposes," and these defendants are informed and believe, and therefore aver, that during the continuance of the said constitution the General Assembly, by virtue of said article 118, was without power to pass any act the effect of which would be to exempt the Citizens' Bank of Louisiana from taxation or to continue beyond 1884 the exemption granted said bank by the act of 1833, amended by the act of 1836, and that consequently act No. 40 of the General Assembly of Louisiana of 1874, enacting that the charter of the Citizens' Bank of Louisiana shall expire on the 30th of January, 1911, could and did have no other effect than to continue the bank's corporate existence beyond the original date of the expiration of its charter, subject to the constitution of 1868—that is to say, the bank's corporate existence was continued with unimpaired right to exemption up to the original date of the expiration of its charter, say in 1884, but that thereafter it became subject to taxation in accordance with the constitution of the State. Further answering, these defendants are informed and believe, and therefore aver, that any legislation by the General Assembly during the existence of said constitution of 1868 is controlled or to be construed according to the limitations of said constitution, and that, referring to the legislation prior to 1868 and mentioned in complainant's bill, the duration of the exemption from taxation granted to complainant is clearly and specifically stated in section 30 of the act of 1833 incorporating the bank to be fifty-one years from the passage of the act, and that by the act of January 30th, 1836, above cited, the exemption is narrowed by

78 being restricted to the capital of complainant.

Further answering, these defendants show that they do not know, and therefore cannot say, what amount was subscribed to the capital stock of the bank, nor to what extent property was acquired by the bank in the course of business, nor how far said property may be necessary (if at all) for the purposes of the bank, nor to what amount the bonds of the States may have been negotiated abroad nor how

negotiated, nor what may have been done with the proceeds of said bonds, and they leave the plaintiff to make such proof thereof as is may be able to produce.

Further answering, these defendants show that in 1852 the General Assembly of Louisiana passed act No. 141, entitled "An act for the relief of the Citizens' Bank of Louisiana," of which the preamble is as follows: "Whereas the State of Louisiana is now responsible for bonds issued in favor of the Citizens' Bank of Louisiana for a sum exceeding six millions of dollars, together with accruing interest thereon; and whereas the present condition of said bank is such as to expose the State to loss from the inability of said bank to meet the payment of said bonds and interest if the liquidation of the bank be continued on the system now established by law; and Whereas the managers appointed by the State for said bank have represented that the stockholders will be enabled to secure the State from the said risk of loss if they be restored to the control and administration of the affairs of said bank, with the rights, privileges, and immunities possessed by said bank at the date of the decree of forfeiture rendered against it in the first district court of New Orleans, now the fifth district court of New Orleans, on the eighteenth day of October, eighteen hundred and forty-two: Now, therefore." * * . *

That this was an act to restore upon the conditions men-
79 tioned in said statute the administration and conduct of the affairs of the bank to the stockholders in the same manner, with the same rights and privileges, to the same extent, and with the same restrictions as if said decree of forfeiture had been rendered.

But, according to the express language of the act, the bank, upon the accomplishment of the conditions specified, was only to resume such limited rights and privileges as it enjoyed prior to the forfeiture of its charter, and that, as provided by the acts of 1833 and 1836 hereinbefore mentioned, the capital of the bank during the continuance of the bank's charter, which was to expire, say, in 1884, should be exempt from any tax laid by the State or by any parish or body politic under the authority of the State.

Further answering, these defendants show that thereafter, viz., in 1853, the General Assembly of Louisiana passed act No. 246, which is entitled An act to authorize the Citizens' Bank of Louisiana to convert shares secured by mortgage into cash shares, and that by the 1st section of this act the board of directors to be elected under the act of 10th of March, 1852, entitled "An act for the relief of the Citizens' Bank of Louisiana," were empowered to raise one million of dollars by obtaining the payment in cash of ten thousand out of the one hundred and forty-four thousand shares of the capital stock of the bank; and these defendants, further answering, show that article 121 of the constitution of the State of Louisiana of 1852 provided that the legislature shall have the power to pass such laws as it may deem expedient for the relief or revival of the Citizens' Bank of Louisiana, and the acts already passed for the same purpose are ratified and confirmed: Provided, that the

bank is subject to the restrictions contained in articles 119 and 120 of the said constitution, the said articles 119 and 120 referring
80 to suspension of specie payments, and in case of insolvency of any bank or banking association to the preference to which bill-holders were to be entitled; and these defendants are informed and believe, and therefore aver, that neither by said articles 121 of the said constitution of 1852 nor by said act No. 141 of 1852 and said act No. 246 of 1853 was the limited exemption from taxation enjoyed by the bank under the acts of 1833 and 1836 as heretofore set forth in any manner extended or enlarged; and defendants pray that said acts No. 141 of 1852 and No. 246 of 1853 may be taken as part of this answer.

Further answering, these defendants show that they do not know, and therefore cannot say, what amount of the bonds of the State are still extant unpaid in the hands of holders for value nor to what extent the said mortgages and other assets that may have been pledged for the bonds debt are yet unrealized, and therefore leave the complainant to make such proof thereof as it shall be able to procure.

Further answering, these defendants show that according to articles 203 and 207 of the constitution of Louisiana of 1879 all property shall be taxed except public property, places of religious worship or burial, charitable institutions, property used exclusively for colleges or school purposes, the -state of any public library and that of any literary society used by or connected with such library, books and philosophical apparatus, and paintings and statuary of any company or association kept in a public hall, provided said property be not used for private or corporate profit, and that household property to value of $500 is also exempt, as are also for a certain length of time the capital, machinery, and property used in certain manufactures; that article 234 of said constitution provided, "The General Assembly shall not remit the forfeiture of the charter of any corporation now existing, nor renew, alter, or amend the same, nor pass any general or special
81 law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this constitution," and that article 237 of said constitution provides, "No corporation shall engage in any business other than that expressly authorized in its charter or incidental thereto, nor shall it take or hold any real estate for a longer period than ten years, except such as may be necessary and proper for its legitimate business or purposes," and defendants pray that the articles cited herein from said constitutions of 1868 and 1879 may be taken as part of this answer; that the General Assembly of Louisiana, by act No. 79 of 1880, authorized compromises of the liability of the mortgage stockholders of the bank arising out of the stock mortgages granted to secure their subscription to the capital stock of the bank, said compromises to be made when deemed judicious by the bank and with the assent of the bondholders, and the sums realized from said compromises, as well as from the enforcement of said mortgages by legal proceedings, to be applied to the

satisfaction of the bonds of the State issued in aid of the bank and to the liabilities and necessary expenses of the mortgage-stock department; that these defendants have no personal knowledge as to what may have been the amount of the subsisting bond indebtedness of the State in 1880, and these defendants believe that said act No. 79 of 1880 was passed at the instance and for the benefit of the bank.

Further answering, these defendants admit that the bank was required to accept said act No. 79 of 1880 under the conditions prescribed in articles 234 and 237 of the constitution of Louisiana of 1879, and these defendants are informed and believe that such acceptance was made as required by the provisions of the said statute, and defendants refer to the admission in the bill by
82 plaintiff that said act was accepted by the bank, and these defendants pray that said act No. 79 of 1880 may be taken as part of this answer.

And these defendants, further answering, say that as they are informed and as appears by the accompanying certified copy of an act dated April 27, 1881, before Edgar Grima, notary public, being an act of registration of articles of agreement entered into during the year 1880, and which certified copy, marked Exhibit "A," these defendants pray may be taken as part of this answer, the Citizens' Bank of Louisiana, recognizing the firm of Hope and Company as the mandatory of the bondholders and other creditors, entered into articles of agreement with the said Hope and Company during the year 1880, which articles declare that the holders of the bonds issued by the State in aid of the Citizens' bank consent to act No. 79 of 1880, which act is stated in said articles to have been obtained by the bank from the legislature, and said articles, referring to the holders of the State bonds as parties of the second part and to the Citizens' Bank of Louisiana as the party of the first part, contain the following, viz: "The parties of the second part, in consideration of the engagements taken by the banking department of the bank to carry on and to conclude the liquidation of the mortgage-stock department with fidelity, and to pay over the sums realized to the holders of the bonds regularly and punctually, and to be answerable for any neglect or default in the fulfillment of her engagements, agree with the party of the first part never to sue for nor seek to recover any other sum from the bank aforesaid on its endorsement or on account of the bonds than shall be realized from the mortgage-stock department, and the bondholders agree never to make any claim or demand on the banking department or on its assets for payment of said bonds, except for the amounts realized from the legal and proper liquidation of the mortgage-stock department under
83 the terms of these articles of agreement."

Further answering, these defendants admit that by act No. 85 of 1888 of the legislature of Louisiana, as amended by act No. 106 of 1890, the legislature of Louisiana directed the assessment and taxation of property and the shares of stock of corporation as in said acts set forth, and to effect said object created a board of assessors with power to call on banks for returns of their property and the shares

of their capital stock and the list of their shareholders, and directed said board to assess said property and shares for taxation by the city and State, and subsequently the council of the city of New Orleans, by ordinance No. 5846, directed the levy of taxes for the city of New Orleans as in said ordinance set forth.

Further answering, these defendants admit that the Citizens' Bank of Louisiana is domiciled in the city of New Orleans and has its banking-house in the first tax-collection district of the city, and these defendants have no reason to doubt that said bank is the owner of property in all the collection districts of this city created by act No. 85 of 1888.

Further answering, these defendants show that for the following reasons they contend and assert that the Citizens' Bank of Louisiana is liable to taxation, viz:

That by section 4 of the act of 1836, hereinbefore cited, the capital, and the capital only, was exempted from taxation during the continuance of the bank's charter.

That by act of 1833 incorporating said bank the charter was to continue for the space of fifty-one years from the passage thereof—that is, to some time in 1884.

That according to the constitution of Louisiana of 1868, article 118, the exemption of property from taxation was allowed to
84 be exercised only in favor of property actually used for church, school, or charitable purposes.

That in consequence of said article 118 of the constitution of Louisiana of 1868 the legislature of Louisiana, by act No. 40 of 1874, providing for the continuance of the charter of the bank until 1911, continued the corporate existence of the bank, with such privileges as the bank then possessed, until some time in 1884, but could not extend beyond 1884 the bank's limited exemption from taxation as above set forth, and that subsequently to 1884 the corporate existence of the bank was to continue until 1911, but without exemption from taxation.

That even had this exemption from taxation not expired at the date specified for the expiration of the charter under the said act of 1833, the bank, by its acceptance of act No. 79 of 1880, has subjected itself to the conditions prescribed in articles 234 and 237 of the constitution of Louisiana of 1879; that, in consequence, the bank since said acceptance has held its charter subject to the provisions of said constitution, and that these provisions subject the bank to taxation.

Further answering, the defendants The Board of Assessors show that they have avowed their purpose to assess for the years 1889, 1890, 1891, and 1892 under said act No. 85 of 1888, as amended by said act No. 106 of 1890, the property of the said bank and the shares in its capital stock, and defendants believe that the taxes thus proposed to be assessed will exceed in amount $6,000, and they admit that to the end of making said assessment said board has demanded of the complainant a return of its property and of its shareholders, and unless prevented by process of this court said board proposes to make said assessment as aforesaid for taxation, and these defend-

ants admit that the purpose of such proceedings is to enforce the payment of taxes based on such assessment.

85 Further answering, these defendants deny that the present attempt to make the assessment for the current year and for the three years prior to the current year is any admission by them of the exemption claimed by plaintiff.

Further answering, these defendants show that they are informed that the decision of the supreme court of Louisiana referred to in complainant's bill, as reported in the 32nd Louisiana Annual, page 239, does not decide that complainant is entitled to exemption from taxation to the extent claimed in its bill herein, but, on the contrary, so far as the decision pronounced on the question of exemption from taxation such exemption was applicable to the capital only; and these defendants show that said decision as reported was rendered in February, 1880, prior to the expiration of the bank's charter according to the act of 1833 and prior to the passage of act No. 79 of 1880, and even if the decision had the scope claimed for it in complainant's bill herein, the decision is inapplicable to question- arising upon the expiration of the charter at the date fixed in the act of 1833 and upon the acceptance by the bank of the conditions set forth in said act No. 79 of 1880, and these defendants say that they are informed that in the two suits brought subsequently in the civil district court for the parish of Orleans, viz., 12429 and 20541 of the docket thereof, the issues now raised by these defendants in this answer were not presented to nor passed on by the court, and these defendants upon their information and belief deny that any of the alleged judgments mentioned in complainant's bill herein is *res judicata* as to this existing controversy; and these defendants contend that in this present controversy none of these alleged judgments of court can in any manner whatsoever affect these defendants adversely.

86 And these defendants are informed and believe, and therefore aver, that their proposed action will not be in disregard of the complainant's charter, nor of the constitution of Louisiana of 1812, nor of any of the acts referred to in the bill of complainant herein nor of the act No. 40 of 1874, and show that they are informed and believe, and therefore aver, that, according to the correct construction of said act No. 40 of 1874, complainant's right of exemption from taxation was not and could not be extended thereby beyond the date fixed by the act of 1833 for the expiration of the bank's charter, notwithstanding that the bank's corporate existence was continued until 1911.

Further answering, these defendants, for the reasons hereinbefore recited, deny that act No. 40 of 1874 extended to 1911 the complainant's exemption from taxation, and they say that whatever may have been complainant's rights during the continuance of the charter, as provided by the acts of 1833 and 1836, they deny that act No. 40 of 1874 constitutes any contract between the State, stipulating for itself and the city, and complainant and its shareholders, under which complainant is entitled to exemption from taxation beyond the date fixed by the act of 1833

for the expiration of the charter: and these defendants, for the reasons hereinbefore set forth, deny that article 118 of the constitution of Louisiana of 1868, and that articles 203, 207, 234, and 237 and any other articles of the constitution of Louisiana of 1879, and said act No. 79 of 1880, and said act No. 85 of 1888, and said act No. 106 of 1890, and said ordinance of the council No. 5846, are in any manner violative of and repugnant to the 10th section of article 1 of the Constitution of the United States, prohibiting legislation as to the impairment of contracts.

Further answering, these defendants show that they are
87 informed and believe, and therefore aver, that at the time the Citizens' bank was granted its charter in 1833 and 1836, and for a long time subsequent thereto, there were no levee taxes imposed by the State legislature for the protection of property from overflow; that since then a State levee tax has been imposed and levee districts have been created by the legislature in all the alluvial parishes, with power to levee taxes and force contributions for the purpose of protecting property from destruction by overflow; that all levee taxes and contributions are expended for the purpose of protecting complainant's property, in common with their other property subject to overflow, and complainant is legally and equitably bound for this tax, expended for the purpose of protecting its property, all of which is situated in the alluvial districts, subject to overflow, which levee taxes and contributions are imposed for the special benefit and improvement of such property, and was not contemplated and included in the exemption, if any, granted by the legislature to complainant.

Defendants, further answering, show that they are informed and believe, and therefore aver, that from the time of the granting of complainant's charter, and particularly from 1880 up to 1892, complainant voluntarily and without protest or object, except as to valuation, submitted and listed its property for taxation in the several parishes throughout the State; that it has voluntarily and without object paid all taxes assessed against it throughout the State up to and including the year 1891, and in the parishes of East Baton Rouge and La Fourche also for the year 1892; that therefore complainant is without cause of action except for the taxes of 1892 in those parishes where they have not been paid; that complain-
ant's right to claim exemption from taxation, if it ever
88 existed, which is denied, has been lost by this long acquiescence in the claim and exercise by the State levee districts and parishes of the right to tax; that the payment by complainant of its taxes since 1880 shows its relinquishment of all claim for its exemption, if any existed, which is denied, in accordance with the terms of act No. 79 of 1880.

Defendants, further answering, show that they are informed and believe, and therefore aver, that under section- 56 and 57, page 120, of act No. 106 of 1890 they are entitled to recover from complainant, as costs, to be collected with the taxes, ten per cent. (10) commission upon all taxes, State, levee, district, and parish, due by complainant as attorney fee for the defense of this suit.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and will- to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

Wherefore defendants pray that complainant's bill be dismissed and its demand be rejected *with* at its costs, including the attorney's fees of ten per cent. (10%) on the amount of taxes due and unpaid, which defendants pray to have taken as part of the costs herein.

And for general relief.

89 (Signed) M. J. CUNNINGHAM,
Attorney General.
R. LYONS,
Solicitor for State Tax-collectors.

(Answer filed January 29, 1894.)

U. S. Circuit Court, Eastern District of Louisiana.

CLERK'S OFFICE.

I certify the foregoing to be a true copy of the original bill and answer filed in the case of The Citizens' Bank of Louisiana *vs.* The Board of Assessors *et als.*, No. 12204 of the docket of this court.

Witness my hand and seal of said court, at the city of New Orleans, this 13th day of March, 1895.

E. R. HUNT, *Clerk.*

Part of record No. 32223, entitled The Citizens' Bank *vs.* Mistress Eliza Thomson, executrix, *et als.*, of the docket of the court, offered in evidence by plaintiff.

CITIZENS' BANK
vs.
Mistress ELIZA S. THOMSON, Executrix, & *Order.*
} No. 32223. Civil District Court, Division "D."

Petition & Order.

Filed February 19th, 1895.

90 To the honorable the judges of the civil district court in and for the parish of Orleans:

The petition of the Citizens' Bank of Louisiana, a corporation created by law and domiciled in New Orleans, respectfully shows—

That Mistress Eliza S. Thomson, executrix of Adam Thomson, deceased, and as surviving partner of the community existing be-

tween her and her said husband and as usufructuary under his last will, and Mistress Grace W. Thomson, wife of Thomas B. Clarke, as testamentary heir of said Thomson, residing in New Orleans, and Thomas Bishop, Sarah Bishop, Thomas Wesley Bishop, Willis F. Bishop, Adolphus A. Brown, Mistress Sarah M. Brown, widow; and residing in Indiana, and William R. Brown, residing in California, as heirs of Willis J. Bishop, are justly and truly indebted to petitioner in the full sum of fifteen thousand three hundred and seventy-two dollars, with interest, for this, to wit:

That on the 30th of June, 1860, and on the 16th April, 1866, by two authentic acts respectfully of said dates, the said Adam Thomson and Willis J. Bishop acquired the property in the parish of Orleans hereinafter described, together with eight hundred and fifty-four shares of the capital stock of the Citizens' bank, under the obligation to pay petitioner for said shares at the rate of one hundred dollars per share, the said property and shares being acquired by purchaser, one from John A. Amelung and the other from Michel Gernon, as will fully be set forth hereinafter, seven hundred and thirteen of said shares being acquired under the first-mentioned act from John A. Amelung and one hundred and forty-one of said shares being purchased under the second act from Michael Gernon, the said Thomson and Bishop then binding and obligating themselves to pay petitioner for said shares at the rate of one hundred dollars per share and incurring all the obligations of share-
91 holders of the Citizens' bank as fixed by its charter contained in the act, as will be more fully explained hereinafter.

Petitioner shows that the shareholders of the Citizens' bank are liable for the amount of the shares owned by them whenever calls are made for contributions thereon, and the contributions bear eight per cent. interest from the date the calls are made; that said defendants are now indebted to petitioner in the sum of twelve thousand eight hundred and thirty-four dollars for contributions on the aforesaid seven hundred and thirteen shares of the capital stock of the Citizens' bank, with eight per cent. interest upon nine annual calls or contributions of fourteen hundred and twenty-six dollars each, being the annual calls of two dollars per share on said seven hundred and thirteen shares, said calls having been made on the 1st of December of each and every year from 1881 to 1889, inclusive, and on each of said calls interest is due at the rate of eight per cent. from the date of said calls; and said defendants are further indebted to petitioner in the full sum of two thousand five hundred and thirty-eight dollars for contributions on the aforesaid one hundred and forty-one shares, with eight per cent. interest upon the nine annual calls or contributions of two hundred and eighty-two dollars each, being the annual contributions of two dollars per share on said one hundred and forty-one shares, and said calls were on the 1st of December of each and every year from 1881 to 1889, inclusive, and the calls bear eight per cent. interest from the date of the calls; all of which more fully appears by the resolutions of the board of directors of the Citizens' bank in authentic form calling for said contributions, herewith filed and made part

hereof, and to which special reference is made for fuller explanation and greater certainty, and by the charter of the Citizens'
92 bank and by the act of legislature No. 73 of 1874, directing the manner of calling for contributions on the shares of stock of the Citizens' bank; that when said purchase was made of date the 30th of June, 1860, — John A. Amelung he was bound and liable to petitioner in the sum of seventy-one thousand three hundred dollars, the amount of seven hundred and thirteen shares at one hundred dollars per share, and the payment of said amount to petitioner was then secured by mortgage on the immovable property embraced in said purchase; that when said purchase of the 16th of April, 1866, from Michael Gernon was made he was bound to petitioner in the sum of fourteen thousand one hundred dollars, the amount of said one hundred and forty-one shares at one hundred dollars per share, and the payment of said amount was secured by mortgage on said property embraced in said purchase; that said Thomson and Bishop in effecting said purchases assumed the aforesaid obligations of their said vendor and bound and obligated themselves to pay to petitioner the aforesaid sum of seventy-one thousand three hundred dollars and the said fourteen thousand one hundred dollars, and the said Thomson and Bishop assumed also the mortgages then resting on the property to secure said shares, which mortgages assumed were as follows—that is to say: On the property purchased of said Amelung, of date the 30th of June, 1860, there was existing and still exists the mortgage of said Amelung in favor of the Citizens' bank to secure said seventy-one thousand three hundred dollars, the amount of the said seven hundred and thirteen shares of stock, which mortgage was granted by authentic act before C. Boudousquie, notary, of date the 6th of July, 1847, and on the property embraced in said purchase of date the 16th of April, 1866, there existed and now exists the mortgage to secure fourteen thousand one hundred dollars, the amount of said one hundred and
93 forty-one shares of stock, which mortgage results from the primitive act of mortgage by P. Passebon to the Citizens' bank, passed before C. Boudousquie, notary, of date the 14th of October, 1847, to secure eight hundred and fifty shares of the capital stock of the Citizens' bank; and from the act of subdivision and of mortgage in favor of the Citizens' bank to secure the aforesaid one hundred and forty-one shares granted by act before C. Boudousquie, notary, of date the 10th of January, 1848, by which the aforesaid mortgage for said one hundred and forty-one shares embraced in said sale to said Thomson and Bishop was and now remains restricted to the property embraced in said sale to Thomson and Bishop, and besides said assumption the said Thomson and Bishop, by said act before F. Grima, notary, of date the 30th of June, 1860, specially mortgaged and hypothecated the property embraced in the purchase of that date to secure the payment to petitioner of said seven hundred and thirteen shares of stock at one hundred dollars per share, on the said 16th of July, 1866, by said authentic act before E. Barnett, notary, said Thomson and Bishop specially mortgaged and hypothecated the property embraced in the purchase of

said date to secure the payment to petitioner of said one hundred and forty-one shares at one hundred dollars per share, so that the payment of said eight hundred and fifty-four shares and of all contributions thereon is not secured by said mortgages assumed as well as by those granted in the aforesaid acts of date, respectively, the 30th of June, 1860, and 13th of July, 1866, and *of* the property on which said mortgage now exists is as follows—that is to say:

First. A certain parcel of ground situated in the first district of this city, in the square bounded by Commerce, Julia, St. Joseph, and Tchoupitoulas streets, containing, more or less, two hundred and twenty-five feet five inches front on Commerce street between
94 Julia and St. Joseph streets by a depth of one hundred and ten feet one inch; said parcel of ground is divided into nine several lots of ground, marked as numbers ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, and eighteen, as per plan deposited in the office of Felix de Armas, then a notary public in this city, and annexed to an act among the records of said notary dated the third day of March, 1839, the said lots measuring each twenty-five feet two inches and a half front on said Commerce street by one hundred and ten feet one inch in depth, together with all the buildings and improvements thereon and all the rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining. Secondly. Another parcel of ground, situate in the rear of the above-described lot of ground, said portion of ground measuring, more or less, one hundred and sixty-two feet eleven inches and four lines front on the rear of the above-described property, commencing on the side near Julia street, by a depth of twenty-two feet six inches, together with all the stores, warehouses, sheds, and improvements thereon; also with the use of a brick wall fronting on Poydras street, and all the rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining; said property is mortgaged under said act of the 30th of June, 1850, to secure the payment of the aforesaid contributions on said seven hundred and thirteen shares, amounting to twelve thousand eight hundred and thirty-four dollars, made up of nine annual calls or contributions of fourteen hundred and twenty-six dollars each, and bearing interest from the date of the calls, as hereinbefore stated, and is mortgaged also to secure the payment of the amount — for under the charter of the bank and laws aforesaid.

And the property embraced in said act of the 16th of July, 1866, is as follows, to wit: Thirdly. A certain lot of ground situate
95 in the first district of this city, in the square bounded by Tchoupitoulas, St. Joseph, Commerce, and Julia streets, designated by the number three on a plan drawn by Hedin & Schlarbansen, dated the 13th day of January, 1854, and deposited in the office of A. Boudousquie, notary public—said lot measures twenty-seven feet six inches front on Tchoupitoulas street by eighty-eight feet two inches and four lines in depth between parallel lines—together with all the buildings and improvements thereon, rights, ways, privileges, servitudes, and advantages thereunto belonging or in anywise appertaining, and is mortgaged to secure the payment

of two thousand five hundred and thirty-eight dollars, made up of nine annual calls or contributions of two hundred and eighty-two dollars each of contributions on said one hundred and forty-one shares, with interest from the date of each call, as hereinbefore stated, and is mortgaged also to secure seventy-two dollars on each of said one hundred and forty-one shares not yet called under the charter of the bank and laws aforesaid; that the aforesaid mortgaged property was acquired during the marriage between said A. Thomson and his wife, Mistress Eliza Shields Thomson; that the said A. Thomson is dead and his succession duly opened in this court; that by his last will, admitted to probate, his widow in community, said Mistress Eliza Shields Thomson, is appointed the executrix of his last will, has duly qualified, is also constituted by said will the usufructuary of all the property of his succession; that Mistress Grace W. Thomson, wife of Thomas B. Clarke, is constituted by said will, subject to the aforesaid usufruct, the universal legatee and testamentary heir of said deceased, A. Thomson; that said widow has accepted the aforesaid community existing between her and her said husband, deceased, and she and said universal legatee have accepted under said will the provisions thereof in their favor;

all of which more fully appears by said will, on file in the
96 succession of said Thomson, No. — of the docket of this court,

and by the letters of executorship of said Mistress Eliza Shields Thomson, herewith filed and made part of —; that said Willis J. Bishop is also dead; that he died unmarried, and his sole hekrs are—

Thomas Bishop, Sarah Bishop, Thomas Wesley Bishop, Willis F. Bishop, Adolphus A. Brown, Mistress Sarah M. Brown, widow, and William R. Brown, the two first named being the father and mother of said Willis Bishop, deceased, the third named being the brother of said deceased and the said Willis F. Bishop, Adolphus A. Brown, and William R. Brown being the nephews of said deceased, and said Sarah M. Brown being the niece of said deceased, said nephews and niece inheretory from deceased by representation.

That the executrix of said A. Thomson, in her said capacity and individually as a surviving partner of the said community and as usufructuary under his will, and the said universal legatee of said A. Thomson, and the said heirs of Willis J. Bishop inheriting direct from him or by representation, as hereinabove set forth, are now in possession of said mortgaged property; that the aforesaid mortgaged property is to be sold, subject to the aforesaid shares of stock for which the property is respectively mortgaged, and said shares will be sold with the property; that ten dollars have been paid on each of said shares; that eighteen dollars are now sued for, and that seventy-two dollars on each of said shares, aggregating on the property firstly and secondly described above, embraced in the act of mortgage of the 30th of June, 1860, fifty-one thousand three hundred and thirty-six dollars, and aggregating on the property thirdly above described, embraced in the act of mortgage of the 16th of April, 1866, ten thousand one hundred and fifty-two dollars,

besides the amount sued for, remain unpaid, not yet called for, but subject to be called under the charter of the bank and laws aforesaid.

97 Petitioner further shows that the aforesaid authentic acts herein filed and made part hereof import confession of judgment in petitioner's favor for the debt sued for, and petitioner is entitled to executory process to seize and sell said property for said debts.

Wherefore petitioner prays that an order of seizure and sale be granted herein; that due notice thereof, according to law, be given to said defendants, to wit, Mrs. Eliza Shields Thomson, as testamentary executrix of said A. Thomson and as surviving partner of the community existing between her and her said husband and as usufructuary under his will;

Mrs. Grace Thomson Clarke, as universal legatee of said A. Thomson, and to said Thomas B. Clarke, her husband, and to the aforesaid heirs of Willis J. Bishop, from him direct or by representation as stated in said petition, to wit, Thomas Bishop, Sarah Bishop, Thomas Wesley Bishop, Adolphus A. Brown, Sarah M. Brown, William R. Brown, and Willis F. Bishop.

And after complying with all the requisites of law that said property firstly and secondly described above, embraced in said mortgage of the 30th of June, 1860, and said seven hundred and thirteen shares of stock of the Citizens' bank be seized and sold to pay said indebtedness to petitioner for the aforesaid contributions on said seven hundred and thirteen shares, to wit, the sum of twelve thousand eight hundred and thirty-four dollars, with eight per cent. interest per annum on nine annual calls or contributions of fourteen hundred and twenty-six dollars each from the date of the respective calls—*i. e.*, x 4, the first of December of each and every year from 1881 to 1889, inclusive—the purchaser, besides, to assume the residue of said stock-mortgage debt on said property, nor yet due,

but liable to be called for under the charter of the bank and

98 laws relative thereto, to wit, the sum of fifty-one thousand three hundred and thirty-six dollars, to remain secured by said mortgage on said property until the final payment thereof, and the purchaser to assume all the obligations of a shareholder of the Citizens' bank in respect to said shares, according to the charter of the bank and laws relative thereto.

And that the said property thirdly above described embraced in the act of the 16th of April, 1866, together with one hundred and forty-one shares of the capital stock of the Citizens' bank, be seized and sold to pay the aforesaid indebtedness to petitioner for the contributions on said shares, to wit, the sum of two thousand five hundred and thirty-eight dollars, with eight per cent. interest per annum on nine annual calls or contributions of two hundred and eighty-two dollars each from the date of the respective calls aforesaid—*i. e.*, the 1st of December of each and every year from 1881 to 1889, inclusive—the purchaser, besides, to assume the residue of said stock-mortgage debt on said property not yet due, but liable to be called for under the charter of the bank and laws relative

thereto, to wit, the sum of ten thousand one hundred and fifty-two dollars, to remain secured by mortgage; besides, to assume in respect to said one hundred and forty shares all the obligations of a shareholder of the Citizens' bank in respect to said shares according to the charter of the bank and laws relative thereto, and the balance, if any, of the price of adjudication cash, and for general relief.

HENRY C. MILLER,
Att'y for Plaintiff.

Order.

Considering the accompanying documents, let executory
99 process issue as herein prayed for and according to law.
New Orleans, February 19th, 1891.

N. H. RIGHTOR, *Judge.*

Record No. 12429, *Entitled Citizens' Bank vs. Board of Assessors et als. of the Docket of this Court, Offers in Evidence by Plaintiff.*

Petition. Filed October 30th, 1884.

THE CITIZENS' BANK OF LOUISIANA *vs.* THE BOARD OF ASSESSORS *et als.* } No. 12429. Civil District Court. Division "B."

To the honorable the civil district court for the parish of Orleans:

The petition of the Citizens' Bank of Louisiana, a corporation established by law, domiciled in New Orleans, respectfully shows—

That by the charter of the Citizens' bank it is exempted from taxation, State, parish, and municipal, — represents its property, as appears by the following provisions in its charter: "The said corporation shall, during its existence, be exempt in its capital and property which it may acquire by virtue of any of its provisions of this act from all taxes to the State or to any parish or corporation created by law of this State."

Contained in the 30th section of the act of the legislature incorporating the bank, approved April 1st, 1833, section act, p. 172.

And said exemption is repeated in the 4th section of the act amendatory of said charter, approved 30th January, 1836,
100 section act, p. 16; which exemption is in the following words, to wit: "And the capital of said bank shall be exempt from any tax laid by the State or by any parish or body politic under the authority of the State."

And said acts and sections of the acts are specially referred to for fuller explanation and greater certainty.

That said sections constituting part of the charter which the bank was requested *amount* be revoked or impaired by legislation, and are binding upon the State, parish, and city of New Orleans.

That in the suits of The Citizens' Bank *vs.* Bouny, tax-collector, appeal from the 3rd district court, decided by the supreme court, No. 1368 of its docket, *and* it has been finally adjudged that said

exemptions are valid; all of which more fully appears by reference to the said suits and the decisions of the supreme court in the first of said suits, rendered in February, 1881, and by the decisions of the civil district court in the second of said suits, rendered in March 10th, 1882, and said decisions are pleaded as *res judicata* against and in *law* of plaintiff's demand.

That nine-tenths, binding suit decisions on the exemptions aforesaid in which they are founded, the board of assessors for the State and city have assessed petitioner for State and city taxes *for State aad city taxes* for the year 1884:

Furniture employed in the banking-house of petitioner, one thousand dollars, $1,000.

Furniture supplied in banking-house, five thousand three hundred and sixty-five, $5,365.

On banking-house in square between Gravier, Commercial place, St. Charles, and Camp streets, seventy-five thousand dollars, $75,000,

and upon the shares of stock of the capital of petitioner, the
101 shares being assessed at ninety-two thousand four hundred dollars, — shares being assessed accordingly.

Upon which assessment, taxes, State and city, will be demanded at the rate prescribed by law; all of which more fully appears by said assessments and the notices thereof hereto annexed and specially annexed to — for fuller explanation and greater certainty.

That said assessments are upon the real estate and banking-house and furniture used for and in conducting the business of banking; that to the extent of the value of said real estate and furniture the capital of petitioner is invested therein; that to tax said real estate and furniture is in effect to tax the capital; that said assessment of the shares of stock is also in effect to tax the capital of petitioner, and all said assessments and taxation thereon are in violation of said exemption in the charter of petitioner.

That said assessments are wholly illegal and void; that if permitted to — stock they will be recorded as mortgages against petitioner and the property, and that the collectors of said property — to pay same in violation of the law establishing such exemptions.

That petitioner has protested against said assessments, notwithstanding they have been made, and petitioner is entitled to have the same erased and cancelled.

Wherefore petitioner prays that the Board of Assessors in and for the Parish of Orleans, the City of New Orleans, and the State Tax-collector of the City of New Orleans above Canal St. be duly cited to answer this petition, and, after due proceedings, that petitioner have judgment in favor, decreeing that said assessments are illegal and void, and that they be erased and cancelled and prohibited to be collected; that, if recorded, the mortgages therefrom resulting be decreed to be erased, and for general relief.

MILLER — FINNEY,
Att'y- for Plaintiff.

102 *Answer of Jas. D. Houston, State Tax-collector, etc.*

Filed November 10th, 1884.

THE CITIZENS' BANK OF LOUISIANA *vs.* THE BOARD OF ASSESSORS *et als.* } No. 12429. Civil District Court, Division "B."

Now into court comes James D. Houston, State tax-collector, Upper district, city of New Orleans, and for answer to plaintiff's petition admits that the supplemental or amendatory assessment therein referred to was made, but denies generally each and every other averment and allegation contained in said petition, and prays to be hence dismissed with costs and general relief.

BLANC & BUTLER, *Att'ys.*

Answer — the City of New Orleans.

Filed November 11th, 1884.

Now come defendants and for answer to plaintiff's petitions deny all and singular the allegations therein contained.

Wherefore defendants pray that plaintiff's demand be rejected and suit dismissed with costs and for general relief.

W. H. ROGERS,
City Attorney.

103 *Judgment.*

THE CITIZENS' BANK OF LOUISIANA *vs.* THE BOARD OF ASSESSORS *et als.* } No. 12429. Civil District Court, Division "B."

For the reasons dictated to the stenographer, the court considering the law and the evidence to be in favor of plaintiff and against the defendants—

It is ordered, adjudged, and decreed that there be judgment in favor of the plaintiff, The Citizens' Bank, and against defendants The Board of Assessors for this Parish, The City of New Orleans, and The State Tax-collector above Canal Street, ordering said Board of Assessors in and for the Parish of Orleans, the City of New Orleans, and the State Tax-collector of the City of New Orleans above Canal Street to be directed and commanded to erase as illegal, null, and void the appraisements described in plaintiff's petition & recital below, and thay they be prohibited from collecting any taxes on plaintiff's corporation based on said assessments.

It is further ordered, adjudged, and decreed that the said Board of Assessors in and for the Parish of Orleans, the City of New Orleans, and the State Tax-collector of the City of New Orleans above Canal Street be prohibited from recording any taxes against said plaintiff's corporations property based on said assessments.

The costs of this action to be borne by the above-named defendants.

State and city taxes for the year 1884 upon—

Furniture employed in the banking-house of the petitioner:

One thousand dollars, $1,000.

104 Furniture employed in banking-house:

Five thousand three hundred and sixty-five dollars, $5,365.

One banking-house in square between Gravier, Commercial place, St. Charles and Camp streets, seventy-five thousand dollars, $75,000.

And upon the shares of stock of the capital of petitioner, the shares being assessed at ninety-two thousand and four hundred dollars, $92,400.

Judgment rendered November 5th, 1886.

Judgment signed November 10th, 1886.

W. T. HOUSTON, *Judge.*

Record No. 19144, *Entitled Citizens' Bank vs. Board of Assessors et als., of the Docket of this Court, Offered in Evidence by Plaintiff.*

Petition. Filed October 29th, 1886.

THE CITIZENS' BANK OF LOUISIANA *vs.* THE BOARD OF ASSESSORS *et als.* } No. 19144. Civil District Court, Division "D."

To the honorable the civil district court for the parish of Orleans:

The petition of the Citizens' Bank of Louisiana, a corporation established by law, domiciled in New orleans, respectfully shows—

That the board of assessors for the parish of Orleans have assessed petitioner upon the assessment-rolls for 1886 for taxes to the city of New Orleans and State of Louisiana, on which the assessments are as follows, to wit:

105 On the banking-house of petitioner, erected on petitioner's real estate in the square bounded by Gravier, Camp, Poydras, and St. Charles streets, and on said real estate, assessed at seventy-five thousand dollars, and on 10,500 shares of the capital stock of the bank, assessed at $42.75 per share, aggregating on assessment of $448,875, in which the taxes *are* assessed will amount to upwards of fifteen thousand dollars, as appeared by said assessment, specially referred to for fuller explanation and fuller certainty.

That under the charter of the bank granted by the State the bank is exempted from all taxation, State, parish, and municipal, in any form; that on the faith of said charter and of said exemption the capital of the bank was furnished, the — bank regranted, and its banking has been for years and is conducted, *at* which more fully appears by the *regulator actions*, the act to incorporate the Citizens' bank, approved 1st April, 1833; the act amendatory of the first act, approved 30th January, 1836; the act No. 246 of 1853, the act 241, p. 852, and other acts in the subject, under which act- of 1833 and 1836 the general capital of the bank of ten millions and under which act- of 1852 and 1853 the additional capital of the bank of

McWilliams were furnished, all of which more fully appears by the said acts, specially referred to for fuller explanation and greater certainty, said exemptions being contained in the 37th section of the act 1833.

That the aforesaid assessment *and* shares of $448,875 purports to represent the capital of the bank and is specially in excess of the value of the shares and of the capital, besides being illegal and without an act of law; that the aforesaid real estate assessed as aforesaid is in excess of the value of said real estate, besides being illegal; that said real estate was purchased and the building therein erected with the funds *and* belonging to the capital of the bank and said real estate and building represent and form part of said
106 capital; that said assessments are in violation of the exemption granted to the bank and are illegal, null, and void, and lien found to be binding to direct said assessments is void for repugnancy to the article 1st, section 10, of the Constitution of the United States and an act 155 of the constitution of the State.

That on the suit of The State Tax-collector *of* The Citizens' Bank, decided by the civil district court on the ——, 1880, and approved by the Supreme Court of the United States, section 32 and p. 239, said exemption was maintained and adjudged ruled, and said adjudication is *res judicata* of said fiscal assessment with demands therein.

That within the delays and according to the forms prescribed by law petitioner protested against said assessment and applied to the board of assessors to have the assessment cancelled, but said protest and application were disregarded; that within the delays and according to the forms prescribed by law petitioner made the same protest and application to the common council and to its standing committee on assessments of the city council, but said protest and application were also disregarded.

Wherefore petitioner prays that the board of assessors for the parish of Orleans and the city of New Orleans be duly cited to answer this demand; that the State tax-collector for the first district be also cited; that after due proceedings according to law there be judgment in petitioner's favor, decreeing it to be cancelled and annulled, and that any inscription of the same in the mortgage office be erased and cancelled, and for general relief.

HENRY MILLER,
Att'y for Plaintiff.

107 *Answer of James D. Houston, Tax-collector, Upper District.*

Filed November 2nd, 1886.

Now into court comes James D. Houston, tax-collector, Upper district, parish of Orleans, and for answer to the petition herein filed denies all and singular the allegations and averments contained in said petition except such as are hereinafter admitted.

Further answering, respondent admits that the assessments in controversy were made by the board of assessors of the parish of

Orleans, who were charged with that duty, and this respondent says that all of said assessments were legally made and represent the true cash value of the properties thus assessed, and that said assessments should be maintained.

Respondent, further answering, shows that plaintiff is not entitled to any reduction of said assessments, among other reasons, because he failed to apply for relief to said board of assessors and to the committee of assessments of the city council, as the law directs.

Wherefore respondent prays that plaintiff's demand be rejected and his suit dismissed with costs, and that respondent have judgment in his favor, and for general relief in the premises.

BLANC & BUTLER, *Attorneys.*

Answer of the City of New Orleans.

Filed November 8th, 1886.

And now before the court comes the City of New Orleans, and for answer to the petition herein filed she denies each and every allegation in said petition contained except such as may be hereinafter admitted, and upon trial of this cause will require strict and
108 legal proof of such averments.

Wherefore respondent prays that plaintiff's petition may be dismissed, and that judgment may be rendered in favor of defendant and against plaintiff, with costs and general relief in the premises.

W. H. ROGERS,
City Attorney.
WYNNE ROGERS,
Assistant City Attorney.

Judgment.

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA
vs.
THE BOARD OF ASSESSORS *et als.*

No. 19144. Civil District Court, Division "D."

In this cause, submitted to the court for adjudication for the reasons orally assigned by the court, the law and evidence being in favor of plaintiffs—

It is ordered, adjudged, and decreed that there be judgment in favor of plaintiffs, The Citizens' Bank of Louisiana, and against The Board of Assessors of the Parish of Orleans and James D. Houston, tax-collector for the Upper district for the parish of Orleans, decreeing that the assessment for the year 1886 standing against the banking-house or real estate in the square bounded by Camp, Poydras, and St. Charles street, assessed at seventy thousand dollars, or on 10,500 shares of the capital stock at 42.75 per share, aggregating an assessment of $448,875, null and void and of no effect and same

be cancelled and erased from the books of their respective
109 offices, and that any inscription of the same in the mortgage office be cancelled and erased, and costs of suit.

Judgment rendered March 3rd, 1887.

Judgment signed March 10th, 1887.

N. H. RIGHTOR, *Judge.*

Record No. 20541, *Entitled Citizens' Bank of Louisiana vs. Board of Assessors, of this Court, Offered in Evidence by Plaintiff.*

Petition. Filed March 21st, 1887.

THE CITIZENS' BANK OF LOUISIANA *vs.* THE BOARD OF ASSESSORS *et als.* } No. 20541. Civil District Court, Division "A."

To the honorable the civil district court in and for the parish of Orleans:

The petition of the Citizens' Bank of Louisiana, a corporation established by law, domiciled in the city of New Orleans, respectfully shows—

That petitioner is exempted by law from all taxation, State or municipal, upon its capital, shares, and property of every description, as appears by the act of the legislature of Louisiana approved April 1st, 1833, entitled "An act to incorporate the Citizens' Bank of Louisiana," and especially the 30th section of said act, and by the act amendatory of the proceeding act, approved January
110 30th, 1836, and especially referred to for fuller explanation and greater certainty.

Petitioner shows that under said charter contained in said legal contracts, as in accordance with the conditions thereof, the Citizens' Bank of Louisiana was organized in 1836 with a capital of upwards of ten millions of dollars, then obtained from the subscribers to the capital stock on accordance with the charter of the bank; that in 1853 additional capital for the Citizens' bank of one million dollars was obtained from the subscribers thereto under the authority of the act of the legislature of Louisiana for the relief of the Citizens' bank, being the act No. 141 of 1852 and the act of the legislature of Louisiana No. 246 of 1853, approved April 28th, 1853; that the aforesaid original capital obtained in 1856, as well as the said increased and additional capital obtained in 1853, was all furnished and paid to the bank on *its* faith of its charter, and especially *in* the faith of the aforesaid exemption in the charter of all the property, stock, and capital of the Citizens' bank, and that relying on the aforesaid exemptions the said bank has conducted and is now conducting its banking business.

Petitioner further — that said acts containing the charter of the said bank, and especially the provisions thereof containing said exemptions from taxation, are contracts under the protection of the articles of the Federal and State constitution- protecting contracts,

said articles being articles 1, section 10, of the Constitution of the United States, and similar articles in the State constitutions; and petitioner further shows that said exemptions have been decreed valid by the courts.

Petitioner further shows that, notwithstanding said exemptions from said taxation and said judgments decreeing the same to be valid, the board of assessors for the parish of Orleans are about to assess the Citizens' bank upon the assessment-rolls for the year 1887
111 for taxation upon its shares of stock and upon its banking building and upon the furniture therein used by petitioner for conducting its said banking business and upon other property possessed by petitioner; that said proposed assessments are without warrant of law, are prejudicial and injurious to petitioner, and will cause irreparable injury to petitioner, and it is entitled to an injunction to prohibit and enjoin said assessments. Wherefore petitioner prays that said board of assessors for the parish of Orleans and the city of New Orleans be duly cited to answer this petition; that, considering the bond and affidavit herewith filed, a writ of injunction issue directed to said board, enjoining and prohibiting them and each member thereof from assessing the Citizens' bank for taxes, city or State, for 1887 or for any subsequent year upon the capital stock of the Citizens' bank or the shares thereof or upon any other property of petitioner; that said injunction be made perpetual, and that said board and the recorder of mortgages be prohibited and enjoined from recording any such assessments in the office of the recorder of mortgages, and for general relief.

STANLEY O. THOMAS,
President Citizens' Bank.
HENRY C. MILLER,
Att'y for Citizens' Bank.

Stanley O. Thomas, president of the Citizens' bank, being duly sworn, deposes and says that all the facts and allegations contained in the foregoing petition are true.

(Signed) STANLEY O. THOMAS,
President Citizens' Bank.

Sworn to and subscribed before me, notary, at New Orleans, La., on this 19th day of March, A. D. 1887.

Witness my hand and seal.

EDGAR GRIMA,
Notary Public.

Order.

Let a writ of injunction issue as herein prayed for and ac-
112 cording to law upon petitioner furnishing bond in the sum of one thousand dollars, conditioned as the law requires.

New Orleans, March 21st, 1887.

A. L. TISSOT, *Judge.*

be cancelled and erased from the books of their respective
109 offices, and that any inscription of the same in the mortgage office be cancelled and erased, and costs of suit.

Judgment rendered March 3rd, 1887.

Judgment signed March 10th, 1887.

N. H. RIGHTOR, *Judge.*

Record No. 20541, *Entitled Citizens' Bank of Louisiana vs. Board of Assessors, of this Court, Offered in Evidence by Plaintiff.*

Petition. Filed March 21st, 1887.

THE CITIZENS' BANK OF LOUISIANA *vs.* THE BOARD OF ASSESSORS *et als.* } No. 20541. Civil District Court, Division "A."

To the honorable the civil district court in and for the parish of Orleans:

The petition of the Citizens' Bank of Louisiana, a corporation established by law, domiciled in the city of New Orleans, respectfully shows—

That petitioner is exempted by law from all taxation, State or municipal, upon its capital, shares, and property of every description, as appears by the act of the legislature of Louisiana approved April 1st, 1833, entitled "An act to incorporate the Citizens' Bank of Louisiana," and especially the 30th section of said act, and by the act amendatory of the proceeding act, approved January
110 30th, 1836, and especially referred to for fuller explanation and greater certainty.

Petitioner shows that under said charter contained in said legal contracts, as in accordance with the conditions thereof, the Citizens' Bank of Louisiana was organized in 1836 with a capital of upwards of ten millions of dollars, then obtained from the subscribers to the capital stock on accordance with the charter of the bank; that in 1853 additional capital for the Citizens' bank of one million dollars was obtained from the subscribers thereto under the authority of the act of the legislature of Louisiana for the relief of the Citizens' bank, being the act No. 141 of 1852 and the act of the legislature of Louisiana No. 246 of 1853, approved April 28th, 1853; that the aforesaid original capital obtained in 1856, as well as the said increased and additional capital obtained in 1853, was all furnished and paid to the bank on *its* faith of its charter, and especially in the faith of the aforesaid exemption in the charter of all the property, stock, and capital of the Citizens' bank, and that relying on the aforesaid exemptions the said bank has conducted and is now conducting its banking business.

Petitioner further — that said acts containing the charter of the said bank, and especially the provisions thereof containing said exemptions from taxation, are contracts under the protection of the articles of the Federal and State constitution- protecting contracts,

said articles being articles 1, section 10, of the Constitution of the United States, and similar articles in the State constitutions; and petitioner further shows that said exemptions have been decreed valid by the courts.

Petitioner further shows that, notwithstanding said exemptions from said taxation and said judgments decreeing the same to be valid, the board of assessors for the parish of Orleans are about to assess the Citizens' bank upon the assessment-rolls for the year 1887 for taxation upon its shares of stock and upon its banking
111 building and upon the furniture therein used by petitioner for conducting its said banking business and upon other property possessed by petitioner; that said proposed assessments are without warrant of law, are prejudicial and injurious to petitioner, and will cause irreparable injury to petitioner, and it is entitled to an injunction to prohibit and enjoin said assessments. Wherefore petitioner prays that said board of assessors for the parish of Orleans and the city of New Orleans be duly cited to answer this petition; that, considering the bond and affidavit herewith filed, a writ of injunction issue directed to said board, enjoining and prohibiting them and each member thereof from assessing the Citizens' bank for taxes, city or State, for 1887 or for any subsequent year upon the capital stock of the Citizens' bank or the shares thereof or upon any other property of petitioner; that said injunction be made perpetual, and that said board and the recorder of mortgages be prohibited and enjoined from recording any such assessments in the office of the recorder of mortgages, and for general relief.

STANLEY O. THOMAS,
President Citizens' Bank.
HENRY C. MILLER,
Att'y for Citizens' Bank.

Stanley O. Thomas, president of the Citizens' bank, being duly sworn, deposes and says that all the facts and allegations contained in the foregoing petition are true.

(Signed) STANLEY O. THOMAS,
President Citizens' Bank.

Sworn to and subscribed before me, notary, at New Orleans, La., on this 19th day of March, A. D. 1887.

Witness my hand and seal.

EDGAR GRIMA,
Notary Public.

Order.

Let a writ of injunction issue as herein prayed for and ac-
112 cording to law upon petitioner furnishing bond in the sum of one thousand dollars, conditioned as the law requires.

New Orleans, March 21st, 1887.

A. L. TISSOT, *Judge.*

Answer.

Filed March 31st, 1887.

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA
vs.
THE BOARD OF ASSESSORS *et als.*
No. 20541. Civil District Court, Division "A."

And now before the court comes the City of New Orleans, and for answer to the petition herein filed she denies each and every allegation in said petition contained, except such as may be hereinafter admitted and legal proof of such averments.

Wherefore respondent prays that plaintiff's petition may be dismissed, and that judgment may be rendered in favor of defendant and against the plaintiff, with costs and general relief in the premises.

W. H. ROGERS,
City Attorney.
WYNNE ROGERS,
Assistant City Attorney.

Judgment.

THE CITIZENS' BANK OF LOUISIANA
vs.
THE BOARD OF ASSESSORS *et als.*
No. 20541. Civil District Court, Division "A."

113 In this case, submitted to the court upon the evidence and pleadings on file, the law and evidence being in favor of plaintiff, it is ordered, adjudged, and decreed that the injunction herein issued on the 21st day of March, 1887, be now made perpetual, and that the board of assessors for the parish of Orleans and the members thereof be enjoined and prohibited from assessing the Citizens' bank for taxes, city or State, for the year 1887 upon its capital stock on the shares thereof or its property, and that said assessment, if made, be cancelled from the books of assessments for the year 1887, and that the recorder of mortgages for the parish of Orleans be, and he is hereby, enjoined from receiving said assessment upon the books of his office.

Costs herein be paid by defendants.

Judgment rendered April 27th, 1887.

Judgment signed May 3rd, 1887.

A. L. TISSOT, *Judge.*

Motion for Appeal.

Extract from the minutes of May the 3rd, 1895.

Present: Honorable N. H. Rightor, judge.

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA
vs.
BOARD OF ASSESSORS *et als.*
No. 44806. Civil District Court, Division "D."

On motion of M. J. Cunningham, attorney general, and R. Lyons, att'y for State tax-collector, on suggesting to the court
114 — movers ar eaggrieved by the final judgment rendered herein on March 26, 1895, and signed April 22, 1895, and desire to appeal therefrom—

It is ordered that Harrison Parker, State tax-collector first district, parish of Orleans, be granted a suspensive and devalutive appeal without bond, returnable to the supreme court of Louisiana, according to law, on the 3rd Monday of May, 1895, because the clerk has informed mover that he would not have time to prepare the transcript for the next return day, viz., the 1st Monday in May, 1895, on account of the press of business in the office and the numerous transcripts he is now preparing for the appellate courts.

115 *Certificate.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, Geo. W. Prados, d'y clerk of the civil district court for the parish of Orleans, do hereby certify that the foregoing one hundred and fourteen pages do contain a true, correct, and complete transcript of all the proceedings had, documents, &c., and evidence adduced upon the trial of the cause wherein State of La. *ex rel.* Citizens' Bank of La. is plaintiff and Board of Assessors *et als.* are defendants, instituted in this court and now in the records thereof under the No. 44806.

(Copy of deed of sale annexed to transcript.)

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of said court, at the city of New Orleans, on this 14th day of May, in the year of our Lord one thousand eight hundred and ninety-five, and in the one hundred and five year of the Independence of the United States of America.

[SEAL.] GEO. W. PRADOS, *D'y Clerk.*

116 *Proceedings Had in the Supreme Court of the State of Louisiana.*

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

Transcript of appeal, filed May 22nd, 1895.

(Signed) PAUL E. MORTIMER,
Deputy Clerk.

Agreement to Supply Omissions in the Transcript of Appeal.

(Filed May 22nd, 1895.)

THE CITIZENS' BANK OF LOUISIANA
vs.
THE BOARD OF ASSESSORS *et al.* } No. 11861.

It is agreed that any party to this suit shall have the right to supply in the transcript any documents, papers, testimony, or evidence omitted from the same at any time before the submission of the case.

It is further agreed that the transcript on file in the supreme court in the cause entitled "The Citizens' Bank of Louisiana *vs.* Bouny, tax-collector," shall be taken, considered, and used in all respects as though incorporated in the transcript of appeal herein.

New Orleans, May 22nd, 1895.

(Signed) M. J. CUNNINGHAM,
Att'y Gen'l.

" R. LYONS,
Att'y Tax-collectors.

(Signed) HENRY DENIS,
" B. K. MILLER,
Att'ys for Citizens' B'k of La.

117 *Copy of Certain Judicial Proceedings Had in the United States Circuit Court for the Eastern District of Louisiana.*

(Filed November 5th, 1895.)

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA
vs.
BOARD OF ASSESSORS *et als.*
No. 11861.

Hearing and Submission of Cause and Notes of Evidence.

Extract from the minutes, April term, 1893.

NEW ORLEANS, *June 24th*, 1893.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

CITIZENS' BANK
vs.
BOARD OF ASSESSORS *et als.*
No. 12112.

This cause came on this day for hearing upon the bill of complaint, supplemental bill, answers, replications, exhibits, and testimony.

Henry C. Miller appearing for the complainant; E. A. O'Sullivan, city attorney, and H'y Renshaw, ass't city attorney, for the city of New Orleans; Richard Lyons, for the State tax-collectors and sheriffs made defendants.

Whereupon complainant offered the following evidence, viz:

The following acts of the legislature of Louisiana:

118 The charter of the Citizens' Bank of date the 1st of April, 1833, Session Acts, p. 172; the act of the legislature of Louisiana of the 30th of January, 1836, amending the charter of the Citizens' Bank, Session Acts of 1836, p. 16; the act No. 141 of 1852, Session Acts, p. 109; the provision in the State constitution of 1852 referring to the Citizens' bank, to wit, article 121, the act No. 246 of 1853, Session Acts, p. 207; the act No. 45 of 1873, Session Acts, p. 97; the act No. 40 of 1874, Session Acts, p. 77; the act No. 79 of 1880, Session Acts, p. —; the act No. 106 of 1890, Session Acts, p. 120.

And it is agreed that all the acts of the legislature or provisions in the constitution of the State referring to the Citizens' bank or having any bearing upon this suit shall be deemed in evidence and read from the constitution and statute books without being published in the record; the ordinance of the city council of the city of New Orleans of date the —— —, No. 5846, and other ordinances from 1889 to 1892, directing the assessment and collection of taxes upon the shares of stock of the banks and imposing licenses upon the banks.

The extracts from the assessments-rolls of the shares of stock of the Citizens' bank and upon its property for the years 1889, 1890, 1891, 1892.

The petitions, answers, and judgments of the third district court, No. — of the docket, and the judgment of the supreme court, the decision of which is in the 32nd Annual, p. 239.

The petitions, the answers, and the judgments of the civil district court in the following-entitled suits:

The Citizens' Bank *vs.* The Board of Assessors, No. 12429 of the docket of the civil district court; The City of New Orleans *vs.* The Citizens' Bank, No. 3629 of the docket of the civil district
119 court; The Citizens' Bank *vs.* The State Tax-collector, No. 20669 of the docket of the civil district court; The Citizens' Bank *vs.* The City of New Orleans, No. 19144 of the docket of the civil district court; The Citizens' Bank *vs.* The Board of Assessors, No. 20541 of the docket of the civil district court.

The testimony of A. A. Lelong, taken twice; of George W. Nott, of A. A. Aubertin, of George Guinault, and the statements referred to in the testimony.

The compact of 1853 between the mortgage and cash stockholders of the Citizens' bank.

And the following evidence was offered on behalf of The City of New Orleans, defendant, to wit:

Act of April 1st, 1833, of the legislature of Louisiana incorporating the Citizens' bank.

Act of January 30th, 1836, of the legislature of Louisiana amendatory and supplementary to the several acts relative to the act to incorporate Citizens' Bank of Louisiana.

Act 141 of 1852 of the legislature of Louisiana.

Act 246 of 1853 of the legislature of Louisiana.

Constitution of Louisiana of 1868.

Constitution of Louisiana of 1879.

Act 79 of 1880 of the legislature of Louisiana.

Copy of notarial act, April 27th, 1881, before Grima, notary public (marked Exhibit "A").

Certificate of secretary of state of Louisiana showing acceptance by Citizens' bank of act 79 of 1880.

Act 85 of 1888 of the legislature of Louisiana.

Act 106 of 1890 of the legislature of Louisiana.

Ordinance of the city of New Orleans No. 5846, C. S.

Deposition of Charles H. Schenck, marked "D-Y."
120 Deposition of A. E. Blackmar, marked "D-Z."

Document referred to in said depositions of Schenck and Blackmar and marked "X."

Deposition of Charles H. Schenck, marked D-Y^2.

Deposition of A. E. Blackmar, marked D-Z^2.

And the State tax-collectors for the parish of Orleans and other parishes in the State of Louisiana offered their evidence as follows:

1. Affidavit of J. H. Slaughter, sheriff and tax-collector, parish of East Baton Rouge, marked T. C. 1; also 4 letters from A. A. Le-

long to J. H. Slaughter, marked, respectively, T. C. 2, T. C. 3, T. C. 4, T. C. 5.

2. Affidavit of A. A. Browne, sheriff and tax-collector, parish of Iberville, marked T. C. 6.

3. Affidavit of P. E. Leria, sheriff & tax-collector, parish of La Fourche, marked T. C. 7.

4. Affidavit of C. V. Thibaut, sheriff & tax-collector, parish of Plaquemines, marked T. C. 8.

5. Affidavit of Marc Cognovich, assessor, parish of Plaquemines, marked T. C. 9.

6. Certificate of F. S. Hingle, secretary police, parish of Plaquemines, marked T. C. 10.

7. Affidavit of Leonard Arroyo, ex-assessor, parish of Plaquemines, marked T. C. 11.

8. Affidavit and return for assessment made by Edw. H. Lombard, agent of the Citizens' Bank of Louisiana, marked T. C. 12.

9. Copy of newspaper, "The Plaquemines Protector," of date July 18, 1891, showing official minutes of police jury of the parish of Plaquemines held July 6, 1891, marked T. C. 13.

10. Two affidavits of Wm. L. Laugridge, sheriff and tax-collector, parish of Jefferson, marked, respectively, T. C. 14 and T. C.
121 15; also letter of A. A. Lelong to Austin W. Rountree, dated Nov. 29, 1890, marked T. C. 16.

11. Three returns for assessment made by E. H. Lombard, agent of the Citizens' bank, to O. Besancon, assessor, Jefferson parish, marked respectively T. C. 17, T. C. 18, T. C. 19.

12. Affidavit of A. W. Conerly, sheriff and tax-collector, parish of Terrebonne, marked T. C. 20; also letter of A. A. Lelong to O. Daspit, marked T. C. 21; also sworn return for assessment made by E. H. Lombard, agent of the Citizens' bank, to Claude Duval, assessor of Terrebonne, marked T. C. 22.

13. Affidavit of E. E. Nunez, sheriff and tax-collector, parish of St. Bernard, marked T. C. 23.

14. Affidavit of Lewis Ory, sheriff and tax-collector, parish of St. Charles, and certificate of J. B. Martin, clerk and recorder of that parish, marked T. C. 24.

15. Affidavit of T. T. Baudouin, assessor, parish of St. Charles, marked T. C. 25.

16. Affidavit and certificate of J. H. Womack, sheriff and tax-collector, parish of St. Helena, marked T. C. 26.

Also—

Act	5	of extra session	1878, page	218.
"	103	of	1886, "	118.
	78	of extra session	1876, page	120.
	46	of	1877, "	72.
	44	of	1886, "	56.
	26	of	1884, "	30.
	59	of	1886, "	96.
	33	of	1879, "	51.
	93	of	1890,	95.
	95	of	1890,	99.

	79 of	1890,	63.
122	13 of	1892,	10.
	14 of	1892,	18.
	89 of	1892,	113.

all of above showing formation of levee districts.

And thereupon the cause was argued by the solicitors for the parties respectively and submitted, when the court took same under consideration.

Agreement.

Filed June 24, 1893.

THE CITIZENS' BANK OF LOUISIANA *vs.* THE BOARD OF ASSESSORS *et als.* } No. 12112. United States Circuit Court.

This case is submitted to the final decree of the court upon the testimony, documentary and oral, specified in the notes of evidence of the parties hereto and their admissions and agreements; all objections to testimony withdrawn.

(Signed) HENRY C. MILLER, *Sol. for the Compl't.*
" E. A. O'SULLIVAN, *City Att'y,*
" H'Y RENSHAW, *Ass't City Att'y,*
Solicitors for Defendant.
" R. LYONS, *Solicitor for Def't's.*

June 24, 1893. Filing 10 offerings, plaintiff.
" 26 " defendant.
" 4 " "

Opinion on Final Hearing.

123 Filed June 26, 1893.

Circuit Court of the United States, Eastern District of Louisiana.

THE CITIZENS' BANK *vs.* BOARD OF ASSESSORS. }

BILLINGS, *Judge:*

This case is submitted for final decree upon the proper pleadings, proofs, and exhibits.

All of the questions involved have been dealt with in the opinion heretofore rendered in the case, with a single exception.

The new question presented is whether the exemption from taxation includes simply the capital of the bank, technically so termed, or whether the exemption includes not only the shares of the shareholders as represented in what would be technically called the capital, but any other property of the bank. The original charter, Acts of '33, page 192, section 30, exempts its capital and property

which it may acquire by virtue of any of the provisions of this act. The amendatory act of '36, page 17, section 4, exempts the capital of the bank from taxes; but the provision as to the capital of the bank is peculiar. Section 29, page 191, of the original act, which provision has never been repealed or qualified, provides that all the profits made by the said corporation, with certain exceptions, shall be added to and made a part of its capital; and this state of things, so far as the statute is concerned, is to continue until the final dissolution of the corporation. Therefore, under this section, since it could acquire nothing but profits, all its profits are added to its capital by the very terms of its fundamental law.

It differs from any other bank in that respect. The reason of
124 this provision was that the State had its right to have loans and its interests in the profits of the bank, and therefore it saw fit to provide that all its profits should be added to and made a part of its capital.

Again, as a matter of fact, I understand that the property besides what the assessors term the capital is property which the bank received through foreclosures of its stock mortgages. The bank had no other capital except the subscription by the stockholders, secured by stock mortgages. These stock mortgages have been foreclosed. The mortgaged property acquired by the bank and this property is nothing but a portion of the capital of the bank realized by the institution of these foreclosures. In the case of this bank there is, therefore, no distinction between this property and the capital; these several hundred thousand dollars of plantations, etc., which have been realized to the bank by the foreclosures of its stock mortgages are a portion of its capital.

If I am mistaken in this and it is true as a matter of fact that any of this property sought to be taxed has been acquired in any other way than under and through the mortgages which are called stock mortgages, it would still be true that it was profits within the meaning of the section 29 of the charter and would not be liable to taxation.

For these reasons I think that the injunction portion of the final decree should have the same scope as the injunction *pendente lite* and should enjoin any taxation upon the capital of the bank so far as it is represented by money or so far as it is represented by the foreclosures of the stock mortgages which have been received from the stock subscribers in lieu of the money promised by their subscription or so far as it represents the profits of the bank.

125 *Final Decree.*

Entered and filed June 26th, 1893.

THE CITIZENS' BANK OF LOUISIANA *vs.* THE BOARD OF ASSESSORS *et als.* } No. 12112. United States Circuit Court.

This cause came on at this term to be heard upon the bill, supplemental bills, answers, exhibits, and testimony, and was submitted;

upon consideration whereof, for the reasons assigned in the written opinion of the court on file—

It is hereby adjudged and decreed that the City of New Orleans and C. Harrison Parker, State tax-collector for the 1st collection district; Henry Guillotte, State tax-collector for the 2nd collection district, and their successors in office be, and they are hereby, enjoined and prohibited from demanding or collecting or enforcing payment of any and all taxes, whether of the State of Louisiana or the city of New Orleans, for the years 1889, 1890, 1891, 1892 upon the capital, property, or shares of stock of the shareholders of said bank, whether assessed against the bank or the shareholders, as said taxes appear on the regular or supplemental assessment-rolls against the bank for said years, prepared by the board of assessors for the parish of Orleans or otherwise, and that the said City of New Orleans and said State tax-collectors are hereby enjoined and prohibited from demanding, collecting, or enforcing payment in any manner from the Citizens' bank or by seizure and sale of its property of any license or license tax, whether for the city of New Orleans or the State of Louisiana, for the years 1889, 1890, 1891, 1892, and that J. H. Slaughter, J. B. Jones, C. T. Cade, A. A. Browne, William L. Langridge, P. E. Lorio, C. V. Thibaut, E. C. Beuker, E. E. Nunez,
126 Louis Ory, J. H. Womack, A. W. Connely, John H. Clack, sheriffs, respectively, as named, of the following parishes, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, La Fourche, Plaquemines, Pointe Coupée, St. Bernard, St. Charles, St. Helena, Terrebonne, West Feliciana, and their successors in office be, and they are hereby, enjoined and prohibited from demanding, collecting, or enforcing payment in any manner of any and all taxes for the years 1889, 1890, 1891, 1892, whether for said parishes or for the State of Louisiana, imposed upon any and all property, real or personal, of said bank in said parishes and each of them, as said taxes appear on the original or supplemental assessment-rolls of taxation for said parishes or others; that said assessments or supplemental assessment-rolls be, and they are hereby, decreed to be null, void, and of no effect, and any and all inscriptions thereof or based thereon in the office of the recorder of mortgages for the parish of Orleans or in the office of the clerks of the district courts, *ex officio* parish recorder of said parishes, be, and they are hereby, decreed to be erased and cancelled, and the exemption of said Citizens' bank, its capital, property, and shares of stock of its shareholders is hereby recognized and decreed to exist as conferred by its charter and the laws amendatory thereof and relating to the Citizens' bank, and especially by the act No. 40 of 1874, extending the charter of the Citizens' bank, which extension and the said exemption for the further period thereof is hereby recognized and decreed to exist, and the injunctions herein issued is hereby made peremptory; and it is further ordered that the defendants pay the costs of suit.

June 26, 1893.

(Signed) EDWARD C. BILLINGS, *Judge.*

Aug. 4, 1893 Filing 6 documents.

127 *Petition for Appeal.*

Filed April 18, 1894.

CITIZENS' BANK OF LOUISIANA *vs.* BOARD OF ASSESSORS *et als.* } No. 12112. U. S. Circuit Court, Eastern District of Louisiana.

To the honorable the U. S. circuit court for the eastern district of Louisiana:

The petition of the City of New Orleans and the Board of Assessors for the Parish of Orleans and C. Harrison Parker, Henry Guillotte, H. D. Monier, and W. T. Patton, respectively State tax-collectors of the 1st, 2nd, 3rd, and 4th districts of the parish of Orleans, and J. H. Slaughter, J. V. Jones, C. T. Cade, A. A. Browne, William L. Langridge, P. E. Lorio, C. V. Thibault, E. C. Benker, E. E. Nunez, Lewis Ory, J. H. Womack, A. M. Connelly, John H. Clack, respectively sheriffs of the following parishes:

East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, La Fourche, Plaquemines, Pointe Coupée, Saint Bernard, Saint Charles, Saint Helena, Terrebonne, West Feliciana, defendants herein, respectfully represent- that the said defendants, petitioners, are aggrieved by the decree of this honorable court herein rendered and signed on the 26th day of June, 1893; that there is error to the prejudice of said defendants in said decree, by which they will be irreparably injured.

Wherefore petitioners pray that they be allowed an appeal from said decree, returnable to the Supreme Court of the United States, according to law, upon giving bond in an amount to be fixed by the court, and that the Citizens' Bank of Louisiana be cited to answer said appeal, and petitioners pray for general relief.

128 (Signed) E. A. O'SULLIVAN,
City Attorney, Solicitor for the City of New Orleans.
(Signed) M. J. CUNNINGHAM,
Att'y Gen'l,
(Signed) R. LYONS,
Att'y for Tax-collectors,
Solicitors for Board of Assessors & Tax-collectors.

Order.

Let an appeal be granted petitioners as prayed for, returnable to the Supreme Court of the United States, at the city of Washington, within thirty days from the date hereof, upon the petitioners giving bond with good and sufficient security in the sum of one thousand dollars, conditioned as the law directs.

New Orleans, April 18th, 1894.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Assignment of Errors.

Filed April 18, 1894.

CITIZENS' BANK OF LOUISIANA *vs.* BOARD OF ASSESSORS *et als.* } No. 12112. U. S. Circuit Court, Eastern District of Louisiana.

Now, into this honorable court come the City of New Orleans and the Board of Assessors for the Parish of Orleans and C. Harrison Parker, Henry Guillotte, H. D. Monier, and W. T. Patton, respectively State tax-collectors of the 1st, 2nd, 3rd, and 4th districts of the parish of Orleans, and J. H. Slaughter, J. V. Jones, C. T. Cade, A. A. Browne, William L. Langridge, P. E. Lorio, C. V. Thibault, E. C. Benker, E. E. Nunez, Louis Ory, J. H. Womack, A. M. Connelly, and John H. Clack, respectively sheriffs of the following parishes:

East Baton Rouge, East Feliciana, Iberia, Iberville, Jeffer-
129 son, La Fourche, Plaquemines, Pointe Coupée, Saint Bernard, Saint Charles, Saint Helena, Terrebonne, West Feliciana, defendants in the above numbered and entitled cause, and assign the following errors in the opinion and decree of the court herein of date June 26th, 1893:

First. That the court erred in refusing to hold that act No. 40 of 1874, extending charter to A. D. 1911, was enacted subject to the provision of the State constitution of 1868, and that the legislature thereof, while it might extend the life of the corporation, could not, after the period fixed for the duration of its charter, exempt the corporation from the tax required to be levied by the constitution of 1868 and 1879.

Second. That the court erred in not giving effect to the provision of the State constitution of 1879.

Third. That the court erred in not holding that under the provision of act No. 79 of 1880 the bank was subjected to the provision of the constitution of 1879 relative to taxation, particularly articles 234 and 237 of that constitution, the said act showing on its face that it was passed in the interest of the bank and on condition that the bank accept the conditions of the act, which the bank did.

Fourth. That the court erred in not holding that the property of the bank was subject to the burden of reclaiming same and protecting it from overflow.

Fifth. That, considering the evidence and the law applicable thereto, the court erred in not dismissing the bills of complaint herein.

(Signed) E. A. O'SULLIVAN,
City Attorney, Solicitor for City of New Orleans.
" M. J. CUNNINGHAM,
Att'y Gen'l,
" R. LYONS,
130 *Att'y for Tax-collectors,*
Solicitors for Board of Assessors & Tax-collectors.

Bond for Appeal.

Filed April 19, 1894.

UNITED STATES OF AMERICA:

Know all men by these presents that we, the City of New Orleans, the Board of Assessors for the Parish of Orleans, and C. Harrison Parker, Henry Guillotte, H. D. Monier, and W. T. Patton, respectively State tax-collectors of the 1st, 2nd, 3rd, and 4th districts of the parish of Orleans, and J. H. Slaughter, J. V. Jones, C. T. Cade, A. A. Browne, William L. Langridge, P. E. Lorio, C. V. Thibault, E. C. Benker, E. E. Nunez, Lewis Ory, J. H. Womack, A. M. Connelly, John H. Clack, respectively sheriffs of the parishes of East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, La Fourche, Plaquemines, Pointe Coupée, Saint Bernard, Saint Charles, Saint Helena, Terrebonne, West Feliciana, and C. Harrison Parker, are held and firmly bound, jointly and severally, unto the Citizens' Bank of Louisiana in the sum of one thousand ($1,000.00) dollars, lawful money of the United States of America, to be paid to the said Citizens' Bank of Louisiana, its heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 19th day of April, in the year of our Lord eighteen hundred and ninety-four.

Whereas the said City of New Orleans, Board of Assessors for the Parish of Orleans, and C. Harrison Parker, Henry Guillotte, H. D. Monier, and W. T. Patton, respectively State tax-collectors
131 of the 1st, 2nd, 3rd, and 4th districts of the parish of Orleans, and J. H. Slaughter, J. V. Jones, C. T. Cade, A. A. Browne, William L. Langridge, P. E. Lorio, C. V. Thibault, E. C. Benker, E. E. Nunez, Lewis Ory, J. H. Womack, A. M. Connelly, John H. Clack, respectively sheriffs of the parishes of East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, La Fourche, Plaquemines, Pointe Coupée, Saint Bernard, Saint Charles, Saint Helena, Terrebonne, West Feliciana, having heretofore, to wit, on the 18th day of April, 1894, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the 26th day of June, 1893, by the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of The Citizens' Bank of Louisiana *vs.* Board of Assesors for the Parish of Orleans *et als.*, No. 12112 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden City of New Orleans, Board of Assessors for the Parish of Orleans, and C. Harrison Parker, Henry Guillotte, H. D. Monier, and W. T. Patton, respectively State tax-collectors of the 1st, 2nd, 3rd, and 4th districts of the parish of Orleans, and J. H. Slaughter, J. V. Jones, C. T. Cade, A. A. Browne, William L. Langridge, P. E. Lorio, C. V. Thibault, E. C. Benker, E. E. Nunez, Lewis Ory, J. H.

Womack, A. M. Connelly, John H. Clack, respectively sheriffs of the parishes of East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, La Fourche, Plaquemines, Pointe Coupée, Saint Bernard, Saint Charles, Saint Helena, Terrebonne, West Feliciana, shall prosecute their said appeal to effect and shall answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Signed, sealed, and delivered in the presence of—

(Signed) E. A. O'SULLIVAN,
City Attorney,

" M. J. CUNNINGHAM,
Attorney General,

132 (Signed) R. LYONS,
Solicitors for Principals on Bond.

(Signed) C. HARRISON PARKER.

Approved April 19, 1894.

(Signed) CHARLES PARLANGE,
U. S. Judge.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, } ss:

Personally appeared C. Harrison Parker, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans, State of Louisiana, and is worth the full sum of one thousand dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) C. HARRISON PARKER.

Subscribed and sworn before me this 19th day of April, 1894.

(Signed) E. R. HUNT,
Commissioner U. S. Circuit Court, [SEAL.]
Eastern District of Louisiana.

April 18th, 1894. Issuing citation of appeal and marshal's return.

May 5th, 1894. Filing marshal's return on citation of Appeal.

Agreement.

Filed May 10, 1894.

THE CITIZENS' BANK OF LOUISIANA
vs.
THE BOARD OF ASSESSORS. } No. 12112. U. S. Circuit Court, E. D. Louisiana.

133 It is agreed that the certified copies of the assessments upon the property and shares against the Citizens' bank for the years 1889, 1890, 1891, and 1892, to which this agreement is attached, shall be placed in the record in lieu of the certified copies of the same, which were introduced in evidence on the trial of the

above case and which have been lost or mislaid, the copies hereto attached to be filed as of the same date the lost copies were filed and to stand in all respects in lieu of the latter.

(Signed) E. A. O'SULLIVAN,
City Att'y.
" M. J. CUNNINGHAM,
Att'y General.
" R. LYONS,
Att'y Tax-collectors.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk, do hereby certify that the foregoing contains a true copy of the originals on file and of record in this office in the case of The Citizens' Bank of Louisiana *vs.* The Board of Assessors *et als.*, No. 12112 of the docket of the U. S. circuit court, eastern district of Louisiana; and I further certify that the foregoing judicial proceedings were had in said cause from and including the hearing and submission of the cause up to and including its final disposition, as appears from the general docket of record in this office.

Witness my hand and seal of said court, at the city of New Orleans, this 5th day of October, A. D. 1895.

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

Sale by the Civil Sheriff of the Parish of Orleans.

Filed November 5th, 1895.

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA
134 *v.*
BOARD OF ASSESSORS *et als.*
} No. 11861.

Whereas I, Charles W. Drown, civil sheriff of the parish of Orleans, by virtue of a writ of seizure and sale to me directed by the honorable the civil district court for the parish of Orleans, at the suit of Citizens' Bank of Louisiana *vs.* Mrs. Eliza P. Thompson, executrix, & *als.*; Eliza Spider Thompson, ex'r of Adam Thompson and as surviving partner in community between her & her said husband, as usufructuary under his last will; Grace W. Thomson, wife of Thomas B. Clark, as testamentary heir of said Adam Thomson; Thos. Bishop, Sarah Bishop, Thomas Wesley Bishop, Willis F. Bishop, Adolphine A. Brown, widow; Sarah M. Brown, William R. Brown, as heirs of Willis J. Bishop, No. 32223 of the docket of said court, after having fulfilled and complied with all the previous legal requisites, did seize the following-described property, to wit:

1st. A certain parcel of ground situate in the 1st district of this city, in the square bounded by Commerce, Julia, St. Joseph, and Tchoupitoulas street-, comprising, more or less, 225 feet 5 inches front on Commerce St. bet. Julia & St. Joseph streets by a depth

of one hundred & ten feet one inch; said parcel of ground is divided into nine several lots of ground, marked as number- ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, and eighteen, as per plan deposited in the office of Felix de Armas, then a notary public, in this city, and annexed to an act among the record- of said notary, dated the *the* 3d day of March, 1839—the said lot- measure each twenty-five feet two inches & one-half front on Commerce street by one hundred & ten feet one inch in depth—together with all the buildings & improvement- thereon, and all the rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining.

135 2nd. Another parcel of ground situate in the rear of the above-described lot of ground, said portion of ground measuring, more or less, one hundred & sixty-two feet 11 inches & 4 lines front on the rear of the above-described property, commencing on the side near Julia street, by a depth of twenty-two feet 6 inches, together with all the store, warehouse, sheds, & improvements thereon; also with the use of a brick wall fronting on Poydras street & all the rights, ways, privileges, & appurtenances thereunto belonging or in anywise appertaining, together with the seven hundred & thirteen shares of the capital stock of the Citizens' Bank of La. of one hundred dollars each thereto attached & bearing on above properties.

3d. A certain lot of ground situate in the first district of this city, in the square bounded by Tchoupitoulas, St. Joseph, Commerce, & Julia street-, designated by the number three on a plan drawn by Hadin Tcharbausen, dated the 13th January, 1854, & deposited in the office of A. Boudousquie, not. pub.—said lot measures 27 feet 6 inches front on Tchoupitoulas street, eighty-eight feet 2 inches & 4 lines in depth between parallel lines—together with all the buildings & improvements thereon, rights, ways, and privileges, servitudes & advantages thereunto belonging or in anywise appertaining; together with one hundred and forty-one shares of the capital stock of the Citizens' Bank of La. of one hundred dollars each thereto attached & bearing thereon.

The property herein described being the same mentioned in the act on file in the above-entitled suit & dated, viz., 30th June, 1862, before Grima, not.; 6th July, 1847, before C. Boudousquie, notary; 16th April, 1866, Edward Barnett, notary, this reference approved.

New Orleans, Aug. 15th, 1891.

(Signed) WM. WALSH, *D'y Sh'ff.*

136 And after having given due and legal notice to the said defendant- of the said seizure in the manner pointed out by law I advertised the said above-described- property for sale after the expiration of the legal delay from the time of said notice, to wit, on the 13th day of May, 1891, by advertisements composed in English and French, announcing the sale to take place at the auctioneers' exchange, Nos. 72 & 74 St. Charles, bet. Gravier St. and Commercial place, in the first district of this city, on the thirteenth day of May, 1891, at 12 o'clock m. Said advertisements were in-

serted and published in English and French, in two papers in the city of New Orleans, to wit, in the Times-Democrat, in English, & the New Orleans Bee, in French, from the said thirteenth day of May, 1891, to the day of sale, being full thirty days from the date of the first notice given in the said newspapers. Said advertisements were inserted and published in said newspapers on the 13th, 20, 27 May, 3, 10, 13 June, 1891.

And having further complied with and performed all the additional previous legal requisites, & the property having been duly appraised, did expose the same at public sale according to law, at the said auctioneers' exchange, Nos. 72 & 74 St. Charles street, between Gravier & Commercial place, in the first district of this city, on the said thirteenth day of June, eighteen hundred and ninety-one, at 12 o'clock m.

And at the same time and place of sale I did announce in a loud and audible voice the terms and conditions of sale hereinafter expressed and specified, and did read verbatim and in a loud and audible voice the certificate of the recorder of mortgages for the parish of Orleans and city of New Orleans delivered on the day of sale, and by which certificate it appears that there are no other mortgages standing in the name of defendant- and recorded
137 against said before-described property than the following, to wit:

9–7. The drainage privilege, first, second, & third property.

418–86. The privilege against Thomas Bishop & in favor of Peter C. Carter for Oct. 15, 1889, services rendered, nursing & medicine furnished to his wife, Hester Bishop, amounting to $75.00, as per affidavit before J. B. Rosser, Jr., October 15, '89.

146,218. The lease — Adam Thomson granting in favor of A. Maginnis Son for a term of two years, commencing Dec. 1st, 1875, terminating November 30th, 1877, at a rent of $60.00 per month, with privilege of renewal, act before A. Hero, Jr., Dec. 18th, 1875.

127–99. The assumption *of* A. Thomson & Willis T. Bishop took up to the sum of $71,300.00, am't of 713 shares now reduced to 666 shares of the capital stock of the Citizens' Bank of La., act before A. Grima, N. P., representing Chas. Boudousquie, N. P., June 3d, 1860.

124–378. The mortgage granted by John Alex. Amelig in favor of the Citizens' bank, per act 54–4, before Chas. Boudousquie, N. P., July 6, '47, to secure the sum of $71,300.00, amount of 713 shares of the capital stock of the Citizens' bank on 1st & 2nd described property.

127–217. The assumption A. Thomson & Willis T. Bishop took to secure $13,200.00.

82–205. Amount of 132 shares of the capital stock of said bank, per act before E.—Ap'l 25, '66—Barnett, N. P., April 6th, 1866.

124–712. The assumption taken by Michael Gernon, per act before Adolphe Budousquie—

63–684.

Feb'y 14, '54, N. P., July 31st, '54, of.

124–401.

52–273. The assumption taken by Gustave Boyer, act before de Armas, N. P., Oct. 13, '47, of July 27, '69. 124–398.

The mortgage granted by P. A. Farrebon, act before Chas. Boudousquie, N. P., in favor of Citizens' bank, dated Oct. 4, '47, to secure the sum of $85,000.00, am't of 850 shares of the capital stock of said bank—521/264—on said property, as per act
138 before C. Boudousquie, N. P.

24–401

January 10, 4/81, the original Oct. 21, '47, mortgage has been subdivided that the property thirdly described to the amount—24–401—of $14,200.00.

52–270.

Jan'y 10, 1848, am't of 142 shares of the capital stock of said bank, $32,223.

Bk. No. 420, fo. 130. The one in favor of Citizens' bank, recorded on the 4th, resulting from a writ issued by the May, 1891, civil district court, on the 4th May, 1891, for the sum of $15,372 and — cents, with interest stipulated in said writ and cost of suit against said described property.

Bk. 239, f. 12.	Rec'd 18, one mortgage for State taxes for year 1882	$1,000
Bk. " f. "	Rec'd 18, one mortgage for State taxes for year 1882	6,000
Bk. 239.	1882	1,000
Bk. 255, f. 13.	Rec'd 18, one mortgage for State taxes for year 1883	1,000
Bk. " f. "	Rec'd 18, one mortgage for State taxes for year 1883	6,000
Bk. " f. "	Rec'd 18, one mortgage for State taxes for year 1883	1,000
Bk. 286, f. 12.	Rec'd 18, one mortgage for State taxes for year 1884	1,000
Bk. " f. "	Rec'd 18, one mortgage for State taxes for year 1884	6,000
Bk. " f. "	Rec'd 18, one mortgage for State taxes for year 1884	10,000
Bk. 310, f. 12.	Rec'd 18, one mortgage for State taxes for year 1885	4,500
Bk. " f. "	Rec'd 18, one mortgage for State taxes for year 1885	6,000
Bk. " f. "	Rec'd 18, one mortgage for State taxes for year 1885	10,000
Bk. 328, f. 13.	Rec'd 18, one mortgage for State taxes for year 1886	4,500
Bk. " f. "	Rec'd 18, one mortgage for State taxes for year 1886	6,000
Bk. " f. "	Rec'd 18, one mortgage for State taxes for year 1886	10,000
Bk. 357, f. 14.	Rec'd 18, one mortgage for State taxes for year 1887	4,500

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Bk. 357, f. 14.	Rec'd 18, one mortgage for State taxes for year 1887	6,000
Bk. " f. "	Rec'd 18, one mortgage for State taxes for year 1887	10,000
Bk. 378, f. 13.	Rec'd 18, one mortgage for State taxes for year 1888	4,500
Bk. " f. "	Rec'd 18, one mortgage for State taxes for year 1888	6,000
Bk. " f. "	Rec'd 18, one mortgage for State taxes for year 1888	10,000
Bk. 405, f. 13.	Rec'd 18, one mortgage for State taxes for year 1889	4,500
Bk. " f. "	Rec'd 18, one mortgage for State taxes for year 1889	20,000
Bk. 426, f. "	Rec'd 18, one mortgage for State taxes for year 1890	4,500
Bk. " f. "	Rec'd 18, one mortgage for State taxes for year 1890	20,000
Bk. f.	Rec'd 18, one mortgage for State taxes for year 18—	

And at the time and place of sale I did read verbatim and in a loud and audible voice the certificate of the register of conveyances in and for the parish of Orleans, State of Louisiana, delivered on the day of sale, and by which certificate it does not appear that said defendants alienated said before-described property. Properties 1st and 2nd described acquired by Adam Thomson & Willis T. Bishop, June 30th, 1860, Bk. 82–333; title of 3rd described property not registered in C. O.

A. Thomson acquired interest of W. R. Brown, Jan'y 4th, 1869, 94–454.

A. Thomson acquired interest of Thomas Waley Bishop, M'ch 10, '68, 95–163.

A. Thomson acquired interest of Willis T. Bishop, May 7, 1868, 95–87.

A. Thomson acquired interest of Adolphus A. Brown & Sarah M. Harrod, in succ. of W. J. Bishop, June 15th, 1868, Bk. 95, fo. 176.

Adam Thomson acquired interest of Thomas & Isaac Bishop, in succ'n of W. J. Bishop, July 1st, 1868, Bk. 93, fo. 223, except lease to Hearn & Reffer, ending Sept. 30, 1891; reg. July 17th, 1890, 137–83.

When A. A. Lelong being the highest & last bidder for acc't of the Citizens' Bank of Louisiana, the said property *were* ad-
140 judicated to the said A. A. Lelong, for account of the Citizens' Bank of Louisiana, as follows:

1st. The properties hereinabove firstly & secondly described in block for the price and sum of seven thousand dollars	$7,000 "
2nd. And the property hereinabove thirdly described for fifteen hundred dollars	1,500
Total sale	$8,500 00

Payable on the following terms and conditions:

For the 1st & 2nd described properties cash, to pay & satisfy plaintiff's claim, say the sum of $12,834.00, with 8 % interest per annum on nine annual call-or contributions of $1,426 each from the date of the respective call—that is, the 1st of December of each & every year from 1881 to 1889, inclusive—& the costs & charges of suit & sale & the State and city taxes due on said properties. The purchaser binds to assume residue of the stock-mortgage debt not yet due, but liable to be called for under the charter & laws relative thereto, to wit, the sum of $51,336 to remain secured by said mortgages — said properties until final payment thereof, and the purchaser to assume all the obligation of a shareholder of the Citizens' bank in respect to said shares according to the charter of said bank & law relatives thereto, & the balance of the price of adjudication, if any, cash, and for the 3rd described property cash to pay plaintiff'- claim, say the sum of $2,538, with 8 % interest per annum, in nine annual calls or contributions of $282.00 each from the date of the respective calls—that is, the 1st of December of each & every year from 1881 to 1889—inclusive, & the cost & charges of suits — sale & the State & city taxes due on said property; the purchaser, besides, to assume the residue of the stock-mortgage debt not yet due, but liable to be called for under the charter & law of the bank relative thereto, to wit, the sum of $10,152.00 to remain secured by mortgage on said property until final payment thereof, and the purchaser to assume in respect to said 140 shares all the obligation of a shareholder of the Citizens' bank in respect to said shares according to the charter of said bank & law relative thereto, & the balance of the price of adjudication, if any, cash; but the purchaser-, being the plaintiffs in the above-entitled case, & as such holder of the mortgages the 1st in rank bearing on said respective properties & under which said sales were made, have retained in their hand- the total price of adjudication of said properties on account of their claim & mortgages & on account of the costs & charges of suit & sales, etc., on said properties.

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Now, therefore, know all men by these presents that I, the said civil sheriff, in consideration of the premises and by virtue of the laws of the State of Louisiana in such cases made and provided, do sell and transfer the said before-described property to the said Citizens' Bank of Louisiana and all the right and title which the said defendants had in or to the said before-described property; to have and to hold the same to the said Citizens' Bank of Louisiana, their heirs and assigns forever.

In witness whereof I have hereunto signed my name, at New Orleans, in State of Louisiana, this 10th day of July, in the year one thousand eight hundred and ninety-one, and the 116t- year of the Independence of the United States of America.

For CHAS. W. DROWN,
Civil Sheriff of the Parish of Orleans,

(Signed) WM. WALSH, *D'y Sheriff.*

Signed in the presence of the following competent witnesses:
(Signed) PH. J. PATORNO.
" ERNEST RICKER.

142 Endorsed: 32223. Recorded in mortgage office, Book 122, fo. 426, New Orleans, July 11th, 1891. (Signed) J. A. Forcelle, clerk. (Signed) Geo. Guinault, register. Registered in conveyance office, Book 141, folio 138, New Orleans, July 14th, 1891. (Signed) A. J. Villere, register. A true copy. (Signed) L. McCarthy, d'y clerk. Filed March 14th, 1895. (Signed) Geo. W. Prados, d'y cl'k. A true copy. (Signed) Geo. W. Prados, d'y cl'k.

Copy of Writ of Mandamus. Filed November 5th, 1895.

Writ of mandamus to be served on the City of New Orleans, through its proper officer, and on the Board of Assessors for the Parish of Orleans, through its proper officer. Issued January 11th, 1895.

STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA
vs.
BOARD OF ASSESSORS *et als.*
No. 44806, Division "D."

143 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

The State of Louisiana to the Board of Assessors for the Parish of Orleans, through its proper officer, and to the City of New Orleans, through its proper officer, New Orleans, Greeting:

You are hereby commanded, in the name of the State of Louisiana and of the civil district court for the parish of Orleans, to comply with the demand of the relator herein as contained in the petition, a copy of which accompanies this writ and is made a part hereof, or show cause to the contrary, on Monday, the 21st day of January, 1895, at 11 o'clock a. m.

Witness the Honorables F. A. Monroe, N. H. Rightor, T. C. W. Ellis, Fred. D. King, and Geo. H. Theard, judges of our said court, this 11th day of January, in the year of our Lord one thousand eight hundred and ninety-five, and in the one hundred and nineteenth year of the Independence of the United States of America.
(Signed) JAS. D. RANKIN, *D'y Cl'k.*

Sheriff's Return on Writ of Mandamus.

Filed January 15th, 1895.

Received Friday, January 11th, 1895, and on the 12th day of January, 1895, I served a copy of the within writ of mandamus and accompanying petition on The City of New Orleans, defendant herein, by personal service on John Fitzpatrick, its mayor.
Returned same day.
(Signed) JAMES DUIGNAN, *D'y Sh'r'ff.*

Sheriff's fee, $3.00.

144 And on the 12th day of January, 1895, I served a copy of the within writ of mandamus and accompanying petition on The Board of Assessors for the Parish of Orleans, defendant herein, by personal service on J. M. Gleason, its president.
Returned same day.
(Signed) JAMES DUIGNAN, *D'y Sh'ff.*

Sheriff's fee, $3.00.

I certify the above to be a true & correct copy of the original on file and of record in suit No. 44806 of the civil district court.

[SEAL.] (Signed) GEO. W. PRADOS, *D'y Cl'k.*

Statement of Fact and Submission.

Filed February 21st, 1887.

THE CITIZENS' BANK *vs.* THE BOARD OF ASSESSORS and THE CITY OF NEW ORLEANS *et als.* } No. 20541. Division "D."

The Citizens' bank was chartered in 1833, was organized and commenced its business in 1836; the original capital of the bank under the acts of 1833 and 1836 was twelve — ($12,000.00) dollars, — was obtained as directed by the charter; the bank then commenced its business, and ever since that time has prosecuted and is now prosecuting the banking business of the city of New Orleans, and has complied with the terms and conditions of its charter. In 1853
145 the banking department of the Citizens' bank was organized under the constitution of 1852 and the legislation of that and the preceding year, to wit, the act number 146 of 1853. The bank then obtained fresh capital to the amount of one million dollars, and with that capital added to its original capital it has since done business. The capital was obtained on the faith of the charter and of the laws, which contained an exemption of the bank from all taxation upon its capital, shares of stock, and other property. The taxes sought to be collected in this case are levied upon the banking building on Gravier street at the stated valuation of $75,000.00 *dollars*, which building is now used by the bank for the purpose of its banking business; the tax is also upon the furniture of the bank, which is in use by the bank for the purposes of its banking business, and is all in the banking building. Besides, the taxes claimed in this case are levied upon the shares of stock of the bank representing its capital—that is, the assessment is of 1,050 shares at $42.75 per share. There are outstanding and unpaid four million dollars of the bonds of the State of Louisiana issued in aid of the bank under the charter of the bank, to wit, the legislative act No. — of 1836 and the act amendatory thereof, No. — of 1836. The bank is collecting in the assets pledged by the acts of 1833 and

1836 for the payment of the bonds, and is applying these bonds as fast as collected.

(Signed) C. M. CARRIERE.

Sworn to and subscribed before me this 16th Feb., 1887.

(Signed) W. H. STAUB, *D'y Cl'k.*

The plaintiff offers pet., ans., & judgm'ts in suits No. 19144 and 12429, civil district court; the act of 1st Ap'l, 1833, incorporating the Citizens' bank, and especially S. 30th.

The amendatory act of 30th Jan., 1836, and especially sec-
146 tion (4); the act No. 28 of 1853 entitled An act to authorize the Citizens' bank to correct mortgage stock, shares, etc.; the acts following, to wit:

Act No. 40 of 1874.

The decision of the supreme court of the State in Citizens' Bank *vs.* Bouny *et als.*, State tax-collector, reported in 32nd Annual, p. 239, agreed to be read from the volume and deemed in evidence; Citizens' Bank *vs.* City of New Orleans *et als.*, No. 12429, civil district court, division "B."

This case is submitted upon the testimony of Charles Carriere and the legislation acts, all of which relating to the Citizens' bank shall be deemed in evidence and the dec'ns stated, and the decisions, it is agreed, shall be read from the book.

(Signed) H. C. MILLER, *For B'k.*
W. H. ROGERS, *City Att'y.*

I certify the foregoing to be a true and correct copy — statement of fact and submission of the original filed Feb'ry 21st, 1887, on file and of record in suit No. 20526, entitled The Citizens' Bank *vs.* The Board of Assessors and The City of New Orleans *et als.*, of the docket of the civil district court for the parish of Orleans.

[SEAL.] (Signed) GEO. W. PRADOS, *D'y Cl'k.*

EXHIBIT "A."

Registration of Articles of Agreement Between Citizens' Bank & Bondholders at the Request of the Citizens' Bank of La.

No. —.

U. S. Circuit Court, Eastern District of Louisiana, New Orleans Division.

Filed Nov. 7, 1892. (Signed) E. R. Hunt, clerk.

147 UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans.

Be it known that on this twenty-seventh day of the mont- of April, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States of America

the one hundred and fifth, before me, Edgar Grima, a notary public, duly commissioned and sworn in and for this city and the parish of Orleans, therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally appeared Mr. Emile Leon Carriere, residing in this city, president of the Citizens' Bank of Louisiana, a corporation created by law and established in the said city of New Orleans, the said appearer herein acting in his said capacity by virtue of a resolution adopted by the board of directors of the said bank at their sitting of the 26th day of April, 1881, a certified copy of which resolution is annexed for reference to another act of even date herewith in this office, who in his said capacity presented and delivered to me, notary, to be registered among the records of my office a certain printed document signed by Messrs. Hope & Co., at Amsterdam, on the eighth of October, 1880, and signed by the said E. L. Carriere in his capacity of president aforesaid, at New Orleans, on the fifth of November, 1880, and being articles of agreement concluded between the Citizens' Bank of Louisiana, of the one part, and bondholders and creditors of the said bank, of the second part.

And the said appearer having requested me, the said notary, to transcribe and register the said document in my office to
147*a* serve and avail as occasion shall or may require, I, the said notary, complying with the request of the said appearer, have herein copied the said document in full and verbatim as follows, to wit:

"These articles of agreement concluded between the Citizens' "Bank of Louisiana, of the one part,

"And all and each of the owners and Holders of any of the Bonds "of the State of Louisiana, which were originally issued under the "act of the General Assembly of that State, approved 30th January "1836, amendatory and supplementary to the acts relative to the "Act 'to incorporate the Citizens' Bank of Louisiana,' and the "owners and holders of any Bonds or Warrants for interest or of "other form of security given for the extension, renewal or consoli- "dation of any of this debt as originally created, under any subse- "quent Act of the General Assembly of that State, by any officer or "agent of that State, and who shall become parties to these Articles "and assent to the conditions herein established.

"Article 1. The parties of the second part are creditors of the State "of Louisiana as the holders of bonds of the State, issued under the "Act of the General Assembly aforesaid, and other acts passed by "the General Assembly relative thereto, and are creditors of the "Citizens' Bank aforesaid, the party of the first part, as the endorsor "and guarantor of the bonds and the securities given in the extension "thereof, and have an immediate interest in all the securities granted "by the Bank aforesaid in its acts of Incorporation and by the third "and fourth sections of that Act to the holders of its bonds, and "which, by the Act of January, 1836, were transferred to the State "and to the holders of its bonds.—And it appearing to the parties "of the Second part that the State of Louisiana and the Citizens' "Bank, of Louisiana, and the debtors of that State and of that Bank

"and of these parties as bondholders who are designated in
148 "the said Acts, and who have secured their debts by mort-
"gage, are greatly embarrassed, and the funds pledged have
"deteriorated, these parties of the Second part consent to the Act of
"the General Assembly, approved the 9th of April, 1880, which was
"obtained by the party of the first part, from the General Assembly
"of Louisiana;—to provide for the liquidation and settlement of
"those debts, upon terms of compromise, so as to secure the appli-
"cation of the amounts to be realized from said mortgages to the
"payment of the State bonds and to the legal liabilities and neces-
"sary expenses incident to the execution of the Act of the General
"Assembly aforesaid—which Act is as follows and forms part of
"the same.—

"No. 79.

"AN ACT.

"To enable the Citizens' Bank of Louisiana to make compromises
" and settlements with its mortgage Stockholders; to enable said
" stockholders to free their real-estate from said mortgages; to
" secure the application of the amounts realized from said mort-
" gages to the payment of the State bonds issued in aid of the
" bank, and to the legal liabilities and necessary expenses of said
" mortgage Stock department; to increase the directors for the
" State on the board of said bank, and to confer on them certain
" duties and powers with reference to said compromise;—to pre-
" scribe the condition on which this act is passed and is to have
" effect, and to require and prescribe the mode in which the
" benefits of the act shall be accepted.

" Whereas, due proof has been shown to the House in which this
"bill originated that article 48 of the Constitution has been com-
"plied with;—therefore—

" SECTION 1. Be it enacted by the General Assembly of the State
"of Louisiana, That the Citizens' Bank of Louisiana, in ad-
149 "dition to the powers now conferred by law, shall have power
"to compromise and settle the liability of the mortgage
"stockholders of said bank, arising out of the Stock mortgages
"granted by them to secure their subscriptions to the capital stock
"of said bank;—said compromises to be made when deemed judi-
"cious by said bank, and with the assent of the bondholders; pro-
"vided, the same be approved by the directors on the part of the
"State, as provided in this act, on such terms as may be agreed
"upon, and when effected, the said stock mortgages to be released
"and cancelled.

" Second. That all sums realized from said compromises as well
"as from the enforcement of said mortgages by the usual legal pro-
"ceedings, shall be held and applied, by the banking department of
"said bank, to the satisfaction of the bonds of the State, issued in
"aid of the bank, and to the legal liabilities of said mortgage stock
"department, and to the necessary expenses of said department.

" Third. That the directors for the State on the board of said

" bank shall be increased to five, to be appointed by the Governor,
" when this act shall be accepted by the bank, whose duties shall be
" the same as now provided by law; and in addition thereto they
" shall supervise the compromise, as contemplated in Section 1 of
" this act, and for this purpose they shall hold meetings, when called
" upon so to meet by the president of the board of Directors of the
" Citizens' Bank, and shall keep a record of their meetings, and no
" compromises, under the provisions of this act, shall be effected
" without the approval of the majority of said directors on the part
" of the State.

" Fourth. That this act shall not be binding or confer any right
" upon the bank unless accepted within twelve months from the
" date of this act, and under the conditions prescribed in
150 " articles 234 and 237 of the constitution, such acceptance to
" be manifested by the bank, in writing, and filed in the
" office of the Secretary of State.

" R. N. OGDEN,
" *Speaker of the House of Representatives*
" S. D. McENERY
" *Lieutenant Governor and President of the Senate*

" Approved April 9, 1880.

" LOUIS A. WILTZ
" *Governor of the State of Louisiana*

" A true copy
" WILL A. STRONG,
" *Secretary of State.*

" Article 2. The parties to these articles agree, that the debt due
" or to become due on the bonds issued as aforesaid, and the addi-
" tions thereto by interest warrants and of interest on the bonds not
" paid, may be stated as follows:

" 9566 bonds, of which 9266 are State bonds,	
" amounting to.....	$4,118,222.29 and
" 300 are Bank bonds amounting to.....	$133,333.33
	$4,251,555.62
" 9566 warrants for extended coupons at $250.56	
" (fl 626.40).....	$2,396,856.96
" 9566 coupons due 1st February, 1880, at $12	
" (fl 30).....	$114,792.00
" 9566 coupons due 1st February, 1880, on ex-	
" tended	
Carried over.....	$6,763,204.58
151 " Brought forward	$6,763,204.58
" warrants at $6,^{364} (f. 15.66).....	59,921.42
" 9566 coupons due August 1880 on the same	
" bonds and warrants.....	$174,713.42
" Together.....	$6,997,839.42

" besides the running interest since August 1880.

" Article 3. The party of the first part agrees with the parties of " the Second part to cause an inventory to be made forthwith of all " the mortgages, and the obligations and demands secured by " mortgage pledges or other form of security, and all stock sub- " scriptions and obligations appertaining to the subscription for Stock " in the Citizens' Bank and Securities therefor, and of all movable " and immovable property of whatever kind, belonging to or held " by any title by the said bank which shall be subject to the pay- " ment of any portion of the debt described in the preceeding arti- " cle.—The object and purpose for the same being to obtain a precise " and full statement of the property and effects which the said Citi- " zens' Bank holds or controls, to be appropriated to the payment of " the debt aforesaid, under the acts of the General Assembly of the " State of Louisiana, and according to the terms of these articles of " agreement. This inventory shall be submitted to the control of " the parties of the Second part or their agents.

" Article 4. The President and Directors of the Citizens' Bank of " Louisiana, as organized under the act approved the 9th of April, " 1880, and promulgated as Act No. 79 of this year, shall superin- " tend and control the execution of the terms of the said enactment " and conduct the liquidation of the mortgage Stock Department,

" and all the settlements and compromises to be made shall
152 " be conducted in the name of the Bank; and the said Bank
" shall receive and hold all the moneys which may be col- " lected from any of the property contained in the inventory but " the said moneys shall be kept separately from all other moneys of " the Bank, so that they may be, at any time, distinguished from all " other funds, and be subject to the examination of the agents of the " bondholders or the directors appointed by the State. And when- " ever there shall be collected the sum of $50,000, this sum shall be " appropriated to the payment of the debt of the State and of the " Bank, as shown by the bonds and warrants of interest;—provided, " that the Bank shall be allowed to subtract from the collections the " legal and reasonable expenses incident thereto, as those expenses " become payable.

" Article 5. The Commercial firm of Hope & Co, of Amsterdam, " which has for a long period been the correspondent of the Bank, " as the mandatory of the bondholders and other creditors, shall " have authority to represent the bondholders and may appoint one " or more persons who shall have power to confer with the Presi- " dent and Directors of the Bank upon all subjects connected with " its liquidation, and shall deliberate with them as to the course " most prudent to be adopted for the interest of the bondholders, the " State and the Bank, in the matters of arrangement, compromise " or collection by suit at law, and no sale of property and no com- " promise or settlement by which the debt or the mortgage or other " security for the debt is diminished, or a discharge granted without " full payment, shall be valid and operative without the concurrence " of such agents—

" These agents shall have power to examine all the acts and

" entries of the Bank in respect to the liquidation, and have
153 " liberty to take copies or abstracts therefrom and to make
" reports thereof to the bondholders or their agents, when-
" ever they may deem it proper.

" Article 6. The parties of the second part are not to be understood " as impairing or releasing any right or claim upon the State of " Louisiana, as the obligor of the bonds and the principal and pri- " mary debtor; nor against the Bank otherwise than is expressed in " the article seven of this agreement.

" These parties consent to the fulfillment of the objects of the Act " of the General Assembly, approved the 9th April, A. D. 1880, be- " cause the same was designed to relieve the State and the Bank, " and because the liquidation of the Mortgage Stock Department " and the application of the sums to arise from such liquidation to " the payment of the bonds and interest thereon, seem to be de- " manded under the conditions which exist.

" Article 7. It is known to the parties of the second part, that the " Citizens' Bank of Louisiana, under the authority of an Act of the " General Assembly of Louisiana, approved 28th April, 1853, and " promulgated as Act No. 246 of the legislative Acts of that year, " established in that Bank two departments for the care and man- " agement of distinct and separate funds and assets, and that the " subscribers to one of the departments called the cash or banking " department contributed to form one of these departments, and that " the banking business has been always conducted upon the capital " so subscribed, and that the funds of the Mortgage Stock Depart- " ment, for the most part, consisted of mortgages and loans upon a " mortgage security that was not available for current banking, and " that the Banking Department claims that the endorsement and
" guarantee of the Citizens' Bank of the State bonds do not
154 " implicate the separate funds or assets of that department
" for the payment of the bonds.

" It is agreed between the parties that (the Mortgage Stock De- " partment having received advances for the sum of $682430.61 " from the Banking Department for the payment of interest on the " bonds and expenses of the Mortgage Stock Department, and this " sum being due, subject to certain credits, and the application of " certain securities which are wholly inadequate for the payment of " that debt after having been applied with the consent of the par- " ties of the second part) the Banking Department, in consideration " of this agreement, abandons all claim for the excess of its ad- " vances, and that the advances aforesaid shall be considered set- " tled by the $500,000 of assets of the Mortgage Stock Department, " which was withdrawn to form the capital of the Banking Depart- " ment, under the compact, and constitutes the Cash Stock of the " Mortgage Stock Department in the Banking Department.

" The parties of the second part, in consideration of the engage- " ments taken by the Banking Department of the Bank, to carry on " and to conclude the liquidation of the mortgage Stock Depart- " ment with fidelity, and to pay over the sums realized to the holders " of the bonds, regularly and punctually and to be answerable for

"any neglect or default in the fulfilment of her engagements, agree "with the party of the first part, never to sue for, nor seek to re- "cover any other sum from the Bank aforesaid on its endorsement "or on account of the bonds, than shall be realized from the Mort- "gage Stock Department, and the bondholders agree never to make "any claim or demand on the Banking Department or on its assets "for payment of said bonds, except for the amounts realized
155 "from the legal and proper liquidation of the Mortgage "Stock Department, under the terms of these articles of "agreement.

"But these presents are not to be construed as impairing the "claims of the parties of the second part upon the bonds against "the State, which claims are reserved in all of their integrity, as if "this agreement had not been made.

"These articles of agreement shall become obligatory whenever "they shall be subscribed by the Bank and by Hope & Co. as de- "pository of bonds aforesaid under an act dated 4th February, "1880, drawn up by a notary public at Amsterdam.

"New Orleans, 5th Novem / 80.

(Signed) E. L. CARRIERE, *Prest.*

Amsterdam, 8th October 1880

(Signed) HOPE & CO.

And now I, the said notary, having transcribed and registered the said document as above, did carefully compare the foregoing copy with the aforesaid document, and, having found the said copy correct and identical with the document thus presented to me as aforesaid, I, the said notary, have paraphed the said document "*ne varietur*," to be identified with the present act, and have delivered back the said document to the said Emile L. Carriere, who, in his said capacity, does hereby acknowledge the receipt thereof.

Thus done and passed in my office, at the city of New Orleans, on the day and in the month and year first before written, in the presence of Messrs. Charles G. Andry and George Grima, both of this city, competent witnesses, who have signed these presents with the said appearer and me, notary, after the due reading hereof.

(Original signed) E. L. CAR-IERE, *Pres't.*

CHAS. G. ANDRY.
GEO. GRIMA.

156 EDGAR GRIMA, *Not. Pub.*

I certify the foregoing to be a true copy of the original act, extant and of record in my office.

New Orleans, La., 23rd October, 1892.

[SEAL.] (Signed) EDGAR GRIMA, *Not. Pub.*

Certificate of Secretary of State of the State of Louisiana Showing Acceptance by Bank of the Provisions of Act No. 79 of 1880.

UNITED STATES OF AMERICA,
State of Louisiana.

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that the Citizens' Bank of Louisiana filed in the office of the secretary of state its written acceptance of the provisions of act No. 79 of 1880, approved and promulgated 9th April, 1880, and that said acceptance was filed and duly recorded in Book of Proclamations No. 2, November 6th, 1880, pages 140, '1.

Given under my signature, authenticated with the im-
[SEAL.] press of the seal of the State of Louisiana, in the city of Baton Rouge, this 8th day of November, A. D. 1892.

(Signed) T. S. ADAMS,
Secretary of State.

157 *Record No. 7368, Supreme Court, Referred to in Note of Evidence, at Page 9 of this Record.*

No. 7368.

Supreme Court of Louisiana.

Filed Feb'y 3rd, 1879. (Signed) Frank Wall, d'y clr.

STATE OF LOUISIANA:

Third District Court, Parish of Orleans; Hon. F. A. Monroe, Judge.

CITIZENS' BANK OF LOUISIANA
vs.
P. L. BOUNY, Tax-coll., & *als.* } No. 25390.

A. Pitot, Esq., att'y for pl'ff & appellee.

H. N. Ogden, att'y gen'l, & J. C. Eagan, ass't att'y gen'l, for State of La. & appellant.

Sam'l P. Blanc, ass't city att'y, for City of New Orleans & appellant.

Returnable to the supreme court of La. on the 1st Monday in February, 1879.

Petition for Injunction.

Filed 25th June, 1878.

To the honorable the judge of the third district court for the parish of Orleans:

The petition of the Citizens' Bank of Louisiana, a corporation created by law and located in the city of New Orleans, re-
158 spectfully represents—

That the board of assessors have assessed against your petitioners taxes claimed to be due for 1877, payable in 1878, upon

a taxable basis of one hundred and fifty-nine thousand eight hundred and twenty-eight $\frac{62}{100}$ dollars, $159,828.62, for taxable excess over and above the capital of the bank, not including real estate, and the further sum of six hundred and thirty-six thousand four hundred and fifty dollars, $636,450.00, for cash value of capital stock, as appears from the notice of P. L. Bouny, tax-collector, hereto annexed for reference.

That the tax-collector has already notified your petitioner to pay the sum of ($10,351.62) ten thousand three hundred and fifty-one $\frac{62}{100}$ dollars, for taxes assessed as above stated, as appears from said notice above mentioned, and that your petitioners are exposed to seizure under section 7 of act No. 8 of extra session of 1878, approved March 26th, 1878.

That said assessments are contrary to law (the capital stock of the Citizens' Bank of Louisiana and the excess over and above the original capital stock being exempt by law from all taxes under the statutes of the State of Louisiana by act of 1st April, 1833, section 29, and of 30th January, 1836, section 4th), and *and* there is no warrant or authority in the officers of the State of Louisiana to demand and enforce payment of said tax based upon said assessments; that your petitioners, being threatened of a seizure as above stated, are entitled to a writ of injunction under art. 296 of the Code of Practice, prohibiting the tax-collector from proceeding under the 5th section of the act of 1878, No. 8, above mentioned, as such proceedings on the part of the tax-collector would be injurious to your petitioners and would impair their vested rights of exemp-
159 tion from taxation upon the very same property mentioned in the tax-collector's notice.

Petitioners therefore pray that it may please this honorable court to grant a writ of injunction, prohibiting P. L. Bouny, tax-collector, from seizing and selling any property of your petitioners for the payment of the tax herein claimed.

That this petition be served on the said P. L. Bouny, tax-collector; on Allen Jumel, auditor of the State of Louisiana, and on the Board of Assessors in the City of New Orleans; that all said parties be cited to show cause why the prayer of your petitioners should not be granted, and that, after due proceedings had, the assessment complained of by your petitioners, as described in the collector's notice, be declared null and void; that the injunction herein prayed for be maintained and the tax-collector forever prohibited from demanding and collecting payment for the taxes claimed, as above prayed for.

(Signed) A. PITOT & SON, *Attorneys.*

Affidavit for Injunction of E. L. Car-i-re, President, etc.

Filed 25th June, 1878.

Emile L. Carriere, president of the Citizens' Bank of Louisiana, being duly sworn, says that all the allegations in the above petition

contained are true and correct, and that, in his belief, they render an injunction necessary.

(Signed) E. L. CARRIERE, *President.*

Sworn to and subscribed before me this twenty-fifth of June, A. D. 1878.

(Signed) A. PITOT, JR.,
[SEAL.] *Notary Public.*

160 * * * * * * *

Answer of Board of Assessors. Filed 29th June, 1878.

CITIZENS' BANK OF LA. *vs.* P. L. BOUNY, Tax-coll., etc. } No. 25390. 3rd Dist. Court, Parish of Orleans.

And now comes The Board of Assessors, made defendants herein, and for answer say:

1st. That they deny all and singular the allegations in plaintiff's petition contained, except as may hereinafter be admitted.

2nd. That they admit that said Citizens' bank has been assessed as follows for the taxes due the State of Louisiana and city of New Orleans and payable in the year 1878, to wit: On cash value of capital or taxable assetts over and above the capital stock, exclusive of real estate, $159,828.62, and that there has been assessed against the stockholders of said bank the cash value of the stock held by them, exclusive of real estate now taxable assetts on capital and said surplus, of $159,828.62; which valuation and assessments amounts to the sum of $636,450.00; and for the payment of the taxes levied thereon said bank is liable and required to pay all, according to acts No. 8 and No. 9 of the Acts of the Extra Session of the General Assembly of the State of 1878.

3rd. That in so far as plaintiff claims and sets up the right of exemption from taxation and assessment by virtue of acts of 1833 and 1836, respondents aver said acts to be in violation of and contrary to the constitution of the State of Louisiana in force and operation during said years, to the inherent principles of republican government, and to the rule of requiring uniformity and equality in taxation; which said rule has ever been a part of the constitution of the State of Louisiana, and has been distinctly enunciated

161 in article 127 of the constitution of 1845, article 123 of that of 1852, article 124 of that of 1864, and article 118 of that of 1868; that said bank is liable to taxation and assessment on its property equally with all others enjoying the benefits of the constitution and government of this State, and the exemption claimed is in violation of the organic rules controlling and which have ever controlled the legislatures of this State.

4th. That is said acts, in so far as an exemption is claimed by virtue of their provisions, ever were operative and valid, such exemption does not and never did form a contract and become a vested right of said bank, but, at most, as a mere suspension of the sover-ign right of taxation, a privilege extended and which was properly re-

voked and resumed by the State by the articles of the constitution of 1845, 1852, 1864, and 1868 above mentioned and by the existing laws requiring the taxation of all property and uniform and equal assessment.

5th. That the assessment of $636,450.00, as aforesaid, on stock in the hands of stockholders, the tax upon which is required to be paid by said bank for account of said stockholders, the said assessments and the taxation thereon levied is not in violation of the right of exemption claimed by plaintiff.

Wherefore respondents pray that the injunction granted be dissolved, and that the plaintiff's demand and action be refused and dismissed; that there be judgment refusing the exemption claimed and maintaining and enforcing said assessments and taxation thereunder.

Further they pray for costs and for general relief.

(Signed) SAM'L P. BLANC,
Attorney for Board of Assessors.

162 * * * * * * *

Answer of P. L. Bouny, State Tax-collector, etc.

Filed Dec. 19th, 1878.

CITIZENS' BANK OF LA. *vs.* P. L. BOUNY, Tax-coll., etc. } No. 25390. 3rd Dist. Court, Parish of Orleans.

Now comes P. L. Bouny, State tax-collector of second district, parish of Orleans, and Allen Jumel, State auditor, and for answer to plaintiff's petition deny all and singular the allegations in plaintiff's petition contained.

Respondents specially aver that the assessment complained of by petitioner is valid and legal and is directly authorized by act No. 8 of the extra session of the legislature of 1878. Your respondents further show that under act 96 of the session of the legislature of 1877, sec. 55, they are entitled to have the injunction herein taken out dissolved with judgment against plaintiff and the securities on the injunction bond to the amount of ten per centum on the sum *of* the collection of which is herein enjoined and ten per centum for special damages for attorneys' fees and costs of suit.

Wherefore respondents pray that the injunction herein granted may be dissolved; that it may be decreed that the assessment against the shares of the plaintiffs is legal and valid, and the tax demanded thereupon is due by said bank; and respondents further pray that there be judgment against plaintiff, The Citizens' Bank of Louisiana, and the securities for ten per centum on the amount of taxes the collection of which is enjoined and ten per cent. for special damages for attorneys' fees, and respondents pray for costs.

163 And respondents, by way of reconvention, aver that the said P. L. Bouny, State tax-collector, is entitled to demand and receive of the said Citizens' bank the sum of ten thousand three hundred and fifty-one dollars and 62 cents, and that the said bank

contained are true and correct, and that, in his belief, they render an injunction necessary.

(Signed) E. L. CARRIERE, *President.*

Sworn to and subscribed before me this twenty-fifth of June, A. D. 1878.

(Signed) A. PITOT, JR.,
[SEAL.] *Notary Public.*

160 * * * * * * *

Answer of Board of Assessors. Filed 29th June, 1878.

CITIZENS' BANK OF LA. vs. P. L. BOUNY, Tax-coll., etc. } No. 25390. 3rd Dist. Court, Parish of Orleans.

And now comes The Board of Assessors, made defendants herein, and for answer say:

1st. That they deny all and singular the allegations in plaintiff's petition contained, except as may hereinafter be admitted.

2nd. That they admit that said Citizens' bank has been assessed as follows for the taxes due the State of Louisiana and city of New Orleans and payable in the year 1878, to wit: On cash value of capital or taxable assetts over and above the capital stock, exclusive of real estate, $159,828.62, and that there has been assessed against the stockholders of said bank the cash value of the stock held by them, exclusive of real estate now taxable assetts on capital and said surplus, of $159,828.62; which valuation and assessments amounts to the sum of $636,450.00; and for the payment of the taxes levied thereon said bank is liable and required to pay all, according to acts No. 8 and No. 9 of the Acts of the Extra Session of the General Assembly of the State of 1878.

3rd. That in so far as plaintiff claims and sets up the right of exemption from taxation and assessment by virtue of acts of 1833 and 1836, respondents aver said acts to be in violation of and contrary to the constitution of the State of Louisiana in force and operation during said years, to the inherent principles of republican government, and to the rule of requiring uniformity and equality in taxation; which said rule has ever been a part of the constitution of the State of Louisiana, and has been distinctly enunciated
161 in article 127 of the constitution of 1845, article 123 of that of 1852, article 124 of that of 1864, and article 118 of that of 1868; that said bank is liable to taxation and assessment on its property equally with all others enjoying the benefits of the constitution and government of this State, and the exemption claimed is in violation of the organic rules controlling and which have ever controlled the legislatures of this State.

4th. That is said acts, in so far as an exemption is claimed by virtue of their provisions, ever were operative and valid, such exemption does not and never did form a contract and become a vested right of said bank, but, at most, as a mere suspension of the sover-ign right of taxation, a privilege extended and which was properly re-

voked and resumed by the State by the articles of the constitution of 1845, 1852, 1864, and 1868 above mentioned and by the existing laws requiring the taxation of all property and uniform and equal assessment.

5th. That the assessment of $636,450.00, as aforesaid, on stock in the hands of stockholders, the tax upon which is required to be paid by said bank for account of said stockholders, the said assessments and the taxation thereon levied is not in violation of the right of exemption claimed by plaintiff.

Wherefore respondents pray that the injunction granted be dissolved, and that the plaintiff's demand and action be refused and dismissed; that there be judgment refusing the exemption claimed and maintaining and enforcing said assessments and taxation thereunder.

Further they pray for costs and for general relief.

(Signed) SAM'L P. BLANC,
Attorney for Board of Assessors.

162 * * * * * * *

Answer of P. L. Bouny, State Tax-collector, etc.

Filed Dec. 19th, 1878.

CITIZENS' BANK OF LA. *vs.* P. L. BOUNY, Tax-coll., etc. } No. 25390. 3rd Dist. Court, Parish of Orleans.

Now comes P. L. Bouny, State tax-collector of second district, parish of Orleans, and Allen Jumel, State auditor, and for answer to plaintiff's petition deny all and singular the allegations in plaintiff's petition contained.

Respondents specially aver that the assessment complained of by petitioner is valid and legal and is directly authorized by act No. 8 of the extra session of the legislature of 1878. Your respondents further show that under act 96 of the session of the legislature of 1877, sec. 55, they are entitled to have the injunction herein taken out dissolved with judgment against plaintiff and the securities on the injunction bond to the amount of ten per centum on the sum *of* the collection of which is herein enjoined and ten per centum for special damages for attorneys' fees and costs of suit.

Wherefore respondents pray that the injunction herein granted may be dissolved; that it may be decreed that the assessment against the shares of the plaintiffs is legal and valid, and the tax demanded thereupon is due by said bank; and respondents further pray that there be judgment against plaintiff, The Citizens' Bank of Louisiana, and the securities for ten per centum on the amount of taxes the collection of which is enjoined and ten per cent. for special damages for attorneys' fees, and respondents pray for costs.

163 And respondents, by way of reconvention, aver that the said P. L. Bouny, State tax-collector, is entitled to demand and receive of the said Citizens' bank the sum of ten thousand three hundred and fifty-one dollars and 62 cents, and that the said bank

is required by law to pay over to said P. L. Bouny, State tax-collector, the said amount.

Wherefore respondent P. L. Bouny prays that there may be judgment condemning the Citizens' bank to pay over to him the said sum as due on the assessment of shares made according to law, with interest from date of demand.

(Signed) J. C. EGAN,
Assistant Att'y General.

Testimony and Notes of Evidence Taken and Filed 19th Dec., 1878.

CITIZENS' BANK OF LA. *vs.* P. L. BOUNY *et als.* } No. 25390. 3rd Dist. Court, Parish of Orleans.

Appearances: A. Pitot, Esq., attorney general; —— ——, assistant city attorney.

Mr. Pitot offers in evidence the notice served upon the Citizens' bank by P. L. Bouny, tax-collector, marked "A."

A. PITOT: I will state that the capital stock of the Citizens' Bank of Louisiana has never been taxed, neither by the city of New Orleans nor by the State of Louisiana; that no claim was made by the city of New Orleans or the State of Louisiana against the capital stock of the Citizens' Bank of Louisiana nor against the shares in the hands of the stockholders. I will state further that the banking-house in New Orleans and Shreveport have
164 never been taxed because they were considered as part of the capital of the Citizens' Bank of Louisiana.

Mr. Pitot offers in evidence suit No. 27163 of the late superior district court.

Mr. Blanc objects on the ground that it is irrelevant and that it is a matter between other parties.

Statement of Mr. Pitot continued:

"The State levied a tax upon the banking-house where the bank transacts business and recorded it in the recorder's office, in this suit 27163. I sued the recorder of mortgages at the city of New Orleans to show cause why the mortgage should not be erased, because the banking-house, making part of the capital of the bank, could not be taxed, the capital being exempt from taxation. The court supported me and ordered the recorder of mortgages to erase the mortgage inscribed because the property was not taxable, it being part of the capital of the bank."

The attorney general offers in evidence the assessment-roll of 1877, copies to be furnished.

Mr. Pitot offers the charter and amended charter of the bank—Citizens' Bank of Louisiana—marked "A. Q."

* * * * * * *

Peremptory Exception of the Citizens' Bank of La.

Filed 23rd Dec., 1878.

165 CITIZENS' BANK OF LA. vs. P. L. BOUNY, Tax-coll., *et al.* } No. 25390. 3rd Dist. Court, Parish of Orleans.

The peremptory exception of the Citizens' Bank of Louisiana to the claim of the defendant for taxes on the shares of the stockholders of the Citizens' Bank of Louisiana and for damages, as prayed for.

The Citizens' bank except- to the demands of the defendant on the ground that he has no right of action under the statutes relied upon, because said statutes, if construed as prayed for by the defendant, would be unconstitutional and in violation of the vested rights of the Citizens' bank to the exemption of the capital stock from taxation.

Plaintiff therefore prays that this peremptory exception be filed and that the demands of the defendant in reconvention be dismissed with costs.

And as in duty bound, etc.

(Signed) ARMAND PITOT, *Of Counsel.*

* * * * * * *

Judgment.

CITIZENS' BANK OF LA. vs. P. L. BOUNY, Tax-coll., *et als.* } No. 25390. 3rd Dist. Court, Parish of Orleans.

For the reasons assigned in the written opinion of the court this day delivered and filed—

It is ordered, adjudged, and decreed that the assessments
166 complained of be, and the same are, declared null and void, and that the injunction herein issued be made perpetual.

It is further ordered that the demand in reconvention set up by P. L. Bouny, tax-collector, be dismissed and that defendants pay costs.

Judgment rendered January 14th, 1879, and signed January 18th, 1879.

(Signed) F. A. MONROE, *Judge.*

Proceedings Had in the Supreme Court of Louisiana: Opinion and Judgment and Opinion.

Filed May 19th, 1879. T. McC. Hyman, d'y clerk.

CITIZENS' BANK OF LOUISIANA
vs.
BOUNY, Tax-collector. } No. 7368.

Mr. Justice MARR:

Under the revenue act of 1878, extra session, No. 8, taxes were assessed on the "taxable assets of the Citizens' bank over and above the capital stock not including real estate," valued at $159,828.62, and on the cash value of capital stock, "$636,450." The collector notified the bank to pay these taxes, amounting to $10,351.62, and the bank enjoined on the ground that by the original charter of 1833 and the amended charter of 1836 its capital is exempt from all taxes.

The answer is that the exemption claimed is in violation of the law of equality and uniformity which existed under the constitution of 1812 and which has been enunciated in all the subsequent constitutions; that the acts of 1833 and 1836 did not form a
167 contract and did not become a vested right in the bank; that they were at most merely a suspension of the sovereign right of taxation which was properly reserved by the constitutions of 1845, 1852, 1868, which require all property to be taxed and assessments to be uniform, and that the assessment of the $636,450 on stock in the hands of the stockholders is not in violation of the right of exemption claimed by the bank.

The judgment appealed from declared the assessment null and void and perpetuated the injunction.

By the original charter, act of 1833, section 29, it was provided that "all the profits of the bank shall be added to and made a part of its capital," except such dividends as it was authorized to make after the redemption of each series of its bonds, payable at five distinct periods. At each of these periods one-fifth of the profits, if any, were to be divided among the stockholders.

By section 30 of the same act, in consideration of the cession of valuable rights to the State on the payment of $500,000 in lieu thereof, "the said corporation shall, during its existence, be exempt in its capital and property which it may acquire by virtue of the provisions of this act from all taxes to the State or to any parish or corporation created by this State."

By the amendatory and supplementary act of 1836 the bank was relieved of some of the obligations imposed upon it by the act of 1833, and the consideration upon which the exemption had been granted ceased and failed. By section 4 of this amendatory act, p. 17, a portion of the profits was to be paid to the State, "and the capital of said bank shall be exempt from any tax laid by the State or by any parish or body politic under the authority of the State during the continuance of its charter."

168 Under the constitution of 1812 the legislature has the power to select the objects of taxation and the consequent right to exempt from taxation. The exemption granted by the act of 1833 need not be considered, because it was modified and superceded by that granted by section 4 of the act of 1836, which was accepted by the bank, and it is upon this exception that the right of the bank depends.

By its terms this exemption is limited to the capital of the bank, and it covers the profits or that part of the profits which section 29 of the act of 1833 requires to be added to and made part of the capital. No proof in the record shows that any part of the $159,828.62 is subject to taxation, and no part of that sum can be taxed separately, if it represents capitalized earnings. If it is the property of the bank and it is assessed as such it must be profits, and therefore capital.

There is a wide difference between the mere gratuitous exemption of a corporation from taxation and an exemption granted, as in this case, upon a valuable consideration. In the first case it is a mere suspension of the sovereign right to tax all property, which the State may resume at pleasure and which it does resume whenever it sees fit to impose by law a tax on the property. But where the exemption is granted upon a valuable consideration fixed and accepted by the State, such exemption is a contract between the State and the corporation, if within the constitutional power of the legislature. It becomes a vested right, which the Constitution of the United States forbids the State to violate or impair, and the organic law of Louisiana, from the formation of the State government to the present time, was respected and consecrated the inviolability of contracts which is founded in common honesty and the obligations of good faith. Cons. 1812, art. V, section 20; 1845,
169 art. 109; 1852, art. 105; 1868, art. 110.

All the revenue acts under the constitution of 1868, prior to the act of 1878, subjected to taxation "the capital stock of all banks or corporations doing business in this State not expressly exempted from taxation by their charters granted by this State." Act of 1868, p. 248; 1869, p. 147; 1870, extra session, p. 126; 1871, p. 104; 1872, p. 55. None of them *specifically* taxed the stockholders on their shares of bank stock, but all of them taxed "capital invested or employed each year in any trade or commerce."

The judge of the district court attached importance to the fact that no tax was ever imposed on the capital of the bank, and that this was the first attempt to tax the shares of stock as such during the existence of the bank. We think the right of the State to tax within the restrictions of the organic law is inherent, and where no contract has been made binding the State not to tax the power to tax may be exercised at any time with respect to objects and property which had never before been subjected to taxation. The mere failure of the State to exercise any constitutional right cannot be held to be a surrender of that right.

The act of 1878, section 1, after fixing the rate of taxation ad valorem, proceeds, in distinct paragraphs, to enumerate the objects

of taxation. The sixth paragraph specifies "all capital * * * except the capital stock of banks and banking associations whose shares are taxed in the hands of the shareholders." The seventh paragraph designates "the property of whatever kind of all corporations over and above their capital stock," and the eighth paragraph subjects the shares of stockholders in all banks and banking associations." A subsequent clause of this paragraph requires the officers of these institutions to pay to the tax-collectors the
170 taxes on the shares on account of the stockholders at the dates when the respective taxes, State, parish, or municipal, fall due.

We do not find in this act any vindication of the intention of the legislature to tax the capital of the banks, and it was clearly not in the power of the State to tax the capital of this bank. It is not necessary to express any opinion now as to the power of the State to require this bank to pay the taxes due by the stockholders without regard to the state of account between them and the bank. Numerous decisions of the highest authority maintain that the exemption of the capital of a bank does not impair the right of the State to tax the shares in the hands of the stockholders, and, without so deciding absolutely, we shall assume, for the purposes of this case, that the charter exemption of the capital of the *the* bank does not extend to the shares in the hands of the stockholders. See McCollough *vs.* Maryland, 4 Wheaton, 4 Cow. Reps., 490, 491; Union Bank *vs.* State, 9 Yerger, 490; Van Allen *vs.* Assessors, 3 Wallace, 583, 584; People *vs.* Commissioners, 4th Wallace, 258; Bradley *vs.* People, 4th Wallace, 462; Bank *vs.* Commonwealth, 9 Wallace, 359; Lionberger *vs.* Rouse, 9th Wallace, 473; Farrington *vs.* Tennessee, 5 Otto, 687.

Comparing the first clause of the eighth paragraph of the act of 1878 with the sixth paragraph, p. 229, it will be seen that it was as clearly the intention of the legislature not to tax the banks on their capital as it was to tax the stockholders on their shares. The scope and meaning of the second clause of the eighth paragraph are not so obvious: "Said shares shall be assessed at their value after deducting from the capital stock of said banks and banking associations all property otherwise assessed or exempt from taxation."
None of the property of this bank is exempt except the cap-
171 ital, and the property of the bank, in excess of its capital, not including real estate, is assessed at a valuation of $159,828.62. If the legislature intended that the capital of the bank, which is exempt, and the assessed value of its property, real and personal, "otherwise assessed," should be deducted from the capital stock, what would remain as the basis of the valuation of the shares? The shares are not to be assessed at their market value, but at their value after the required deduction. The constitution, art. 118, prescribes that "all property shall be taxed in proportion to its value, to be ascertained as directed by law;" and this act, the first law subjecting the shares of bank stock specifically, has directed the manner of ascertaining the value to be taxed.

The literal interpretation of this clause would leave nothing to

be taxed but the excess of the value of the shares above par and above the value of the real and personal property of the bank, not capital, "otherwise assessed," the practical effect of which would be to exempt the shares from taxation. If the words "all property" do not include the capital, but mean real and personal property, something tangible not part of the capital, the remainder, after deducting the aggregated value of such property, would be the basis of the valuation of the shares. The several shares would be taken and estimated as so many parts of this remainder, not as subdivisions of the capital stock, and their value would be ascertained and the tax levied with respect to this remainder, not with reference to the entire capital stock.

If the word "property" does not include the capital, then the words "or exempt from taxation" must be construed as having no meaning with respect to this bank, since no property of the bank is exempt except its capital; but this would not solve the difficulty.

Whether the capital is or is not included and to be deducted,
172 all the other property of the bank, "otherwise assessed," must be deducted. It is easy to ascertain the cash value in the market of shares representing fixed portions of the capital stock of a bank, but this would not indicate the value of the shares after the deduction provided for. The actual value of the shares would neither be increased nor diminished by this deduction, made in calculation only, for the purpose of taxation; but as the legislature has chosen to prescribe this arbitrary mode of ascertaining the value to be taxed, the assessors had no power to fix the value otherwise.

The third clause of this paragraph is: "And said shares shall be included at such ascertained value in the valuation of the personal property of such stockholders in the assessment of taxes," etc. The meaning is clear—the value to be assessed and taxed must be ascertained in the manner presented in the preceding clause, and not otherwise.

The assessors give the names of the stockholders in the assessment-roll, the number of shares owned by each, and the value—$42.43 a share. These several values carried to the column headed "Cash value of the capital stock of all banks or other corporations doing business in this State, not expressly exempted from taxation by their charters granted by this State," are aggregated without any deduction whatever, and upon this aggregate value and the $159,828.62 the tax of 13 mills is levied.

It has been suggested that if the eighth paragraph is to be so construed as to exempt the shares of stock from taxation it is in violation of the constitution, art. 118, and that the shares may be taxed as capital. However this may be, the assessment is not on capital invested or employed, and it is not necessary for us to say what might be the effect of an assessment which has not been made.

173 Manifestly the assessors have estimated the cash value of the entire capital stock of the bank, and, as the assessment-roll shows, they have not attempted to ascertain the value of the

shares in the manner prescribed in the second clause and they have not included that value in the assessment as required by the third clause. The assessment has not been made in accordance with the law and it is a nullity.

The judgment appealed from is therefore affirmed with costs.

174 *Opinion and Judgment on Rehearing.*

Filed February 9, 1880.

Mr. Justice Spencer.

CITIZENS' BANK
vs.
P. L. BOUNY, Tax-collector. } No. 7368.

On rehearing.

It will be seen by our former opinion in this case that there is demanded of the bank taxes—

1st. On $159,282.62, assessed as "taxable assets over and above the capital stock," and

2nd. On $636,450, assessed to the shareholders of said bank as "value of capital stock, etc."

The taxes so assessed to the stockholders are demanded of the bank under the revenue act of 1878, which requires the banks to pay such assessments.

The bank resist both demands on the ground that by its charter it is exempt therefrom.

1st. We see no reason to doubt the conclusion that by section 4 of the act of Jan'y 30th, 1836, the capital of the Citizens' bank is exempt from taxation. "The capital of said bank shall be exempt, etc., * * * during the continuance of its charter" is the language used. That language is broad enough to cover everything which during its existence should enter into and make part of the capital of said bank.

By the 29th section of the original charter "all the profits made by said corporation shall be added to and made a part of its
175 capital," except a certain fraction of any excess of profits over what was necessary to pay the bonds issued by the bank. It is not pretended that any such excess of profits exists or ever has. As a matter of fact, the bank has never declared a dividend to its shareholders. This sum of $159,828.62 is accumulated profits, which by the charter enter into and become part of the bank's capital, and is therefore exempt.

2nd. The shareholders of the bank have been assessed for the value of their shares or stock and the tax thereon is demanded of the bank. Under the view we have taken of this case it will be unnecessary to discuss the question, so much argued by counsel, as to the right of the State to tax the shares of the stockholders. The bank has no mission to raise such a question except so far as it may be necessary to protect itself. Even if the shareholders be liable to

taxation on their shares (upon which we express no opinion), under the peculiar and exceptional nature of the charter of the Citizens' bank we think it cannot be forced to pay the taxes assessed to its shareholders.

To enable this bank to obtain its capital the State loaned it bonds to — amount of several millions, which bonds were put upon the market and sold by the bank, the bank binding itself to take them up at their maturities and to pay the interest thereon as it accrued. In order to secure the State against loss and guarantee the payment of the bonds, the mortgages and pledges given by the stockholders to secure their subscriptions and loans were transferred to the State and the bondholders. All profits were to be capitalized except as above mentioned; no dividends were to be distributed except out of a small fraction of any surplus of profits after meeting and paying the maturing bonds and interest.

It is, we think, manifest that the bondholders are to be
176 paid out of the profits of this bank by preference and before any dividend can be declared or distributed to shareholders.

It is not shown or pretended that the bank has in its possession any funds which it could legally distribute to its shareholders or which it could pay to them without a manifest violation of its charter. If voluntary payments to or for account of its shareholders would violate its charter and be a breach of its *control* with the State and its bondholders, forced payments would be equally so.

The authorities cited by the defendants are inapplicable to the present case. When the capital, assets, and profits of a bank are at the disposal of its shareholders the State may, perhaps, compel the bank to pay their taxes on stock, but such legislation with reference to the Citizens' bank would be violative of the vested rights of others, and, as we think, unconstitutional.

It is therefore ordered that our former decree remain undisturbed.

177 *Submission of Cause.*

(Extract from the minutes, November 8th, 1895.)

NEW ORLEANS, FRIDAY, *November 8th*, 1895.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Samual D. McEnery, Joseph A. Breaux, Henry C. Miller, associate justices.

STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA
vs.
BOARD OF ASSESSORS *et als.* } No. 11861.

This cause came on this day to be heard and was argued by counsel. Mr. Henry Denis opened for the plaintiffs, appellees; Mr. Richard Lyons replied for the defendants, appellants, and Mr. Denis,

on the same side, closed the argument; and the cause having been submitted to the court upon the briefs for the parties in interest and the papers now on file, the court took time to consider.

(Mr. Justice Miller recuses himself in this case.)

Opinion of the Supreme Court.

(Filed December 2nd, 1895.)

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS. MONDAY, *December 2nd*, 1895.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Henry
178 C. Miller, associate justices.

His honor, Mr. Justice McEnery, pronounced the opinion and judgment of the court in the following case:

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA
vs.
BOARD OF ASSESSORS *et als.* } No. 11861.

Appeal from the civil district court for the parish of Orleans.

The Citizens' Bank, in pursuance of a provision in its charter, demands that certain assessments against its property be cancelled.

The defendant Board of Assessors contend that the same issue is now pending before the circuit court of the United States between the same parties, and pleads *lis pendens*. The board urges also as a defense that the act No. 40 of 1874 granted an extension to the bank of its charter is unconstitutional, being in violation of the constitution of 1868, and that the bank by voluntarily adopting the provisions of act 79 of 1880 brought the charter under the provisions of the constitution of 1879, in which case there could be no exemption of the capital of the bank. It will be unnecessary to notice these defenses, nor will it be necessary to discuss the plea of *res judicata* pleaded by the bank. The cases to which it refers in support of the plea involved the furniture in the banking-house, the banking-house property, and the shares of stock of the corporation. The property upon which it was attempted to assess taxes in those suits is different from that in the instant case, and the issues
179 are essentially different. The property which it is attempted to relieve from taxation is certain real estate specially mortgaged to the bank to secure the payment of 854 shares of the capital stock of the bank. The bank purchased the mortgage; and there being no higher bidder than the bank, it purchased the property in order to make the debt.

The charter of the bank has been so often discussed and the man-

ner of the formation of its capital by subscription to stock and its security by special mortgage so universally understood that we are relieved from the labor of a review of the charter and again stating the rights of the bank under its special mortgages to secure stock subscriptions.

It is only necessary to say that under the supplemental and amendatory act of 1836, sec. 4, only the capital of the bank is exempt from taxation.

Citizens' Bank *v.* Bouny, Tax-collector, 32 Ann., 239.

The question for solution is, The stock for which the special mortgage was given to secure being exempt, does the purchase of the property by the bank substitute the mortgaged property for the stock, thus making it a part of the capital of the bank, exempting it from taxation?

The statement of the proposition, we think, carries with it a negative answer. The shares of stock and the property mortgaged to secure it are distinct and different things. The property while in possession of the mortgagor was subject to taxation, while the shares of stock issued by the bank were exempt. The charter of the bank by its very terms and recitals never contemplated that immovable property should form any part of the banking capital.

It never contemplated that the bank should become the owner of the property in default of paying the mortgage; otherwise there would have been a different contract with the stock subscriber.

180 The bank, like any other mortgage creditor, could only become the owner of the property in the contingency of no one bidding more for it than the creditor. In relation to this mortgaged property it stands in no more favorable relation than if it went into the market as a speculator and purchased property. If it should do so and become the owner of property we do not think it would have the assurance under its present charter to ask relief from taxation.

The debt of the bank secured by special mortgage gives it only a right to have the property judicially sold to pay the debt. It is unfortunate if the security is inadequate and no purchaser can be forced to bid the amount of the debt. The bank is thus forced to purchase the property in certain instances, but we fail to see wherein the mortgaged property by the purchase becomes a part of the capital of the bank. The composition of the capital of the bank is stated in its charter, and there is no reference whatever to immovable property being a part of the capital stock. Such being the case, the purchase of property mortgaged to secure a part of its capital certainly cannot give this specified property a new character.

In its broadest meaning capital signifies actual estate, whether in money or property, owned by an individual or corporation.

23 N. Y., 192.

It is the fund upon which a corporation transacts business, which is liable to its creditors, and in case of insolvency passes to a receiver.

28 Barbour, 320.

The Citizens' bank does not transact its business on an investment in the purchase of immovable property. Its capital is fixed by its charter.

181 The capital of the bank is composed of loans. These loans are granted and secured by mortgages, which mortgages shall form the basis of and stand as full security for the loans and the interest thereon, which the directors are authorized to make, as forming the capital of said bank.

Sections 1 and 3, original charter, act of 1833.

In the charter the word capital means capital stock, the amount of capital designated by the charter, and not the value of the property of the corporation.

30 Ark., 693.

Stock in corporations is personal property. The capital of the bank is composed exclusively of personal property. The mortgage is only an accessory obligation to enforce the payment of the principal one, and we cannot perceive in what manner, when subjected to the ownership of the bank in the enforcement of the payment of its debt, it takes the place of and stands in lieu of the debt, free from the privileges accorded by law to the debt. If the mortgaged property sells for enough to pay the debt, it is, of course, extinguished. If for less, then there is still an obligation resting on the debtor to pay the balance not realized.

If the mortgaged property is to stand in the stead of the principal obligation, it must do so in its entirety. What is to become of the unpaid balance as to taxation? We would in such a case be confronted with the anomoly of the mortgaged property being exempt for the whole amount of the subscription, and the unpaid subscriptions also exempt.

This case might have been disposed of by the assertion that the property upon which the special mortgage was given to secure the payment of the stock subscription was not and is not exempt from taxation. Can the mere act of purchasing the property by

182 the bank give it a status which it did not have before?

The proposition that the mortgaged property when subjected to the ownership of the bank does not take the place as capital of the bank—of the capital stock it was intended to secure—is so plain to us that we have had difficulty in framing an argument to sustain such a self-evident truth. This is the view evidently taken by defendants, as they have failed to file a brief, and we have looked in vain into relator's brief for any substantial reasons against the position assumed by us, unless, as we infer, the contention is that the exemption in the original charter is still in force and that all the property of the bank is exempt from taxation; but even in this contingency we would be inclined to the opinion that the property referred to was only that used in immediate connection with the banking business of the corporation, such as its banking building, furniture, etc., which formed the subject-matter of the dispute in the cases pleaded as *res judicata* by relators.

The judgment appealed from is annulled, avoided, and reversed, and it is now ordered that the relief prayed for be denied and the demand of plaintiff be rejected and the rule granted discharged.

(*Syllabus.*)

When the Citizens' bank subjects property to its ownership which was mortgaged to secure stock subscriptions the property is not exempt from taxation as part of the capital of the bank.

Final Judgment.

(Extract from the minutes, December 2nd, 1895.)

183 NEW ORLEANS, MONDAY, *December 2nd*, 1895.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Henry C. Miller, associate justices.

His honor Mr. Justice McEnery pronounced the opinion and judgment of the court in the following case:

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA
vs.
BOARD OF ASSESSORS *et als.* } No. 11861.

On appeal from the civil district court for the parish of Orleans.

The judgment appealed from is annulled, avoided, and reversed, and it is now ordered that the relief prayed for be denied and the demand of plaintiff be rejected and the rule granted discharged.

(Mr. Justice Miller recused.)

Petition for Rehearing.

(Filed December 11th, 1895.)

Supreme Court of Louisiana.

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LA.
vs.
BOARD OF ASSESSORS *et als.* } No. 11861.

To the honorable the supreme court of Louisiana:

The petition of The Citizens' Bank of Louisiana, the relator & appellee in the above-entitled cause, respectfully represents—

184 That your petitioner is advised and believes that the judgment rendered herein by your honorable court is erroneous, and your petitioner desires that a rehearing of the cause be granted to it for the following reasons, to wit:

That the court holds that the charter of the Citizens' Bank of La. "never contemplated that the bank should become the owner of the property mortgaged in default of paying the mortgage," whilst, on the contrary, it is expressly provided for in the charter and amendatory acts that the bank may purchase such property, and therefore become the owner of it, and may even take it in *dation en payement* of the debts of its stockholders. Act of 1833, sec. 24; act of 1843, sec. 5; act of 1847, sec. 1; act of 1873, sec. 2.

That this declaration of the court that the bank cannot under its charter become the owner of the property upon which it forecloses its mortgage not only leads to an erroneous conclusion of the case at bar, but throws a cloud upon the title of other property which the bank has bought in in the same manner, and may cause it very great injury in the future.

That this error of the court has caused the other error in the judgment, to wit, that real estate could not form part of the capital of the bank, and that when it buys in such real estate, even in replacement or investment of its capital, the said real estate does not become part of its capital.

When it follows, in the judgment of the court, that the exemption of its capital from taxation does not carry with it the exemption of its real estate.

We respectfully represent that the contrary of this has been decided by the Supreme Court of the United States and by the highest courts of several of the States of the Union.

185 In Railroad Companies *vs.* Gaines, 97 U. S., 707, the court said: "There are undoubtedly many cases to be found in this and other courts where it has been held that an exemption of the capital stock of a corporation from taxation was equivalent to an exemption of the property into which the capital had been converted."

See also 31 Conn., 108; 40 Md., 51; 16 Ind., 105; 40 Ga., 646; 52 Md., 640; 65 Mo., 134.

Your honors yourselves have recognized the principle that when the capital is exempted from taxation the property into which it is transformed is equally exempted. Case of Traction Co. *vs.* City, 48 An., 1478.

Your petitioner represents that even the banks created under the free-banking laws of this State have the power and right of becoming the owners of real estate securing loans or other debts in replacement of their capital, though their shares of stock are specifically made personal property. See Revised Statutes, p. 58, secs. 277 and 282.

That it is certainly even more so with the banks known and termed by the laws of the State as "property banks," the whole capital stock of which is secured by real estate.

That whether the moneyed capital of a bank is formed by payment of their subscriptions by the stockholders or by the sale of bonds, as it is the case by special law for the Citizens' bank, the capital stock of this bank is in almost every section of its charter

declared to consist in the subscriptions of the stockholders. See sec. 3 of act of 1833 and others.

The court of Maryland says on this point: "It has been too well settled in Maryland by the repeated decisions of this court to admit
of further discussion that for the purpose of taxation the
186 capital stock of a corporation is the representative of its
property, that both cannot be taxed, and that the exemption of the one carries with it the exemption of the other." 52 Md., p. 640. The other cases cited say the same thing.

Wherefore your petitioner respectfully prays for a rehearing of this cause, and, considering the very great importance of this case, both to your petitioner and to the State of Louisiana, in so far as its bonds are concerned, your petitioner further prays to be granted an oral argument of the rehearing and for general relief.

(Signed) HENRY DENIS,
(Signed) BRANCH K. MILLER, *Of Counsel.*

Motion and Order for Time to File Briefs.

(Extract from the minutes, December 16th, 1895.)

NEW ORLEANS, MONDAY, *December 16th*, 1895.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Henry C. Miller, associate justices.

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA
vs.
BOARD OF ASSESSORS *et als.*
} No. 11861.

On motion of Henry Denis and Branch K. Miller, of counsel for the relator, it is ordered by the court that a delay of ten days be
allowed them to file a brief in support of the application for
187 a rehearing in this case.

Opinion on Application for a Rehearing.

(Filed January 6th, 1896.)

(Mr. Justice MCENERY:)

We have carefully considered the reason urged for a rehearing in this case. On a re-examination of the questions presented we are more than confirmed in the correctness of the views expressed in the opinion.

We refrained from stating the effects as to the taxation of the bank's capital in consequence of act 79 of 1880. We now do the same because we think it unnecessary to do so. We propose to let this question as to the exemption of the bank's capital rest on the decisions heretofore rendered.

A written acceptance of the act was filed by the bank with the secretary of state.

Section 4 of the act reads "that this act shall not be binding or confer any right upon the bank unless accepted within twelve months from the date of this act and under the conditions prescribed in articles 234 and 237 of the constitution, such acceptance to be manifested by the bank in writing and filed in the office of secretary of state."

That the act was for the benefit of the corporation is made certain by the acceptance of the benefit of the act and the text of the same. Article 234 forbids the amending or the altering of the charter of an existing corporation for the benefit of such corporation except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of the constitution of 1879.

188 Article 237, which the bank accepted as governing its charter, provides that "no corporation shall engage in any business other than that expressly authorized in its charter or incidental thereto, nor shall it take or hold any real estate for a longer period than ten years, except such as may be necessary and proper for its legitimate business or purposes."

The acceptance of the benefits of the act bring this corporation under the provisions of the above article.

It is restricted to the business of banking. It cannot for a longer period than ten years hold real estate not essential to the conducting of its banking operations. To hold that the property purchased is a part of the banking capital would in effect be to repudiate this article of the constitution and to nullify the bank's acceptance of the same.

If it be a part of the banking capital, it cannot be diminished in ten years; otherwise the corporation would probably go out of existence by the exhaustion of its capital. The cultivation or the leasing of the property purchased—the only way of administering it without loss—is not a part of the business operations of the bank nor is it incidental thereto. We think the Citizens' bank has heretofore obtained all that it is entitled to—the exemption from taxation of its capital proper and the real estate necessary for carrying on its legitimate business or purposes.

Rehearing refused.

Rehearing Refused.

(Extract from the minutes, January 6th, 1896.)

The court was duly opened pursuant to adjournment.

189 Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Henry C. Miller, associate justices.

THE STATE OF LOUISIANA *ex Rel.* CITIZENS' BANK OF LOUISIANA
vs.
BOARD OF ASSESSORS *et als.*
} No. 11861.

It is ordered that the rehearing applied for in this case be refused.

190 THE STATE OF LOUISIANA *ex Relatione* THE CITIZENS' BANK OF LOUISIANA *vs.* THE BOARD OF ASSESSORS *et als.* } No. 11861. Supreme Court of Louisiana.

To the Honorable Edward Douglass White, associate justice of the Supreme Court of the United States:

The petition of the Citizens' Bank of Louisiana, a corporation created by the law of the State of Louisiana and established in the city of New Orleans, respectfully represents—

That by virtue of its charter and the acts of the legislature of Louisiana amendatory thereof its capital is exempted from all taxation in this State;

That said exemption was not granted gratuitously by the State of Louisiana, but was based upon a valuable consideration and formed a contract between the State and the said bank, protected from impairment by the Constitution of the United States, as decided by the supreme court of Louisiana in the case of The Citizens' Bank *vs.* Bouny, tax-collector, reported at page 239 of the 32nd Louisiana Annual Reports;

191 That by virtue of the charter of said Citizens' Bank of Louisiana the subscriptions of its stockholders to its capital stock are secured by mortgage upon their real estate, and in case of non-payment of the said subscriptions the bank has the right to foreclose the mortgages and to buy in the mortgaged property;

That in such cases the said property becomes part of the capital of the bank and is equally exempt from taxation;

That, notwithstanding the said right of exemption from taxation, the board of assessors for the parish of Orleans and the city of New Orleans have assessed and taxed for the years 1892 and 1893, under the revenue laws of those years, certain real estate which was mortgaged in favor of the Citizens' bank to secure some of the subscriptions to its capital stock, which the said bank bought in at the foreclosure of the mortgage, and which became thereby part of its capital;

That the assessing and taxing of said property was a breach of the aforesaid contract between your petitioner and the State of Louisiana, by which the capital of your petitioner is exempted from all taxation;

That your petitioner contends and claims in the premises that the said revenue laws of this State of the years 1892 and 1893, in so far as they authorize the assessment and taxing of the said property of the Citizens' bank, and the authority exercised under same

by the said board of assessors and city of New Orleans, are violative of the clause of the Constitution of the United
192 States which prohibits the impairing of the obligation of contracts by the States, and for that reason the said laws and the acts of said officials are invalid, null, and void;

That your petitioner has demanded, by mandamus against the respondents in the above-entitled cause, that the said assessments and taxes be decreed null and void for the aforesaid reasons, and that the inscriptions of the same be cancelled on the books of the recorder of mortgages; but the supreme court of Louisiana has rejected your petitioner's demand on the ground that the real estate bought in by the Citizens' Bank of Louisiana at the foreclosure of the mortgages securing its capital stock forms no part of its capital and is not exempt from taxation under its charter:

Now, your petitioner respectfully represents that the question of the validity of the said revenue laws of the State of Louisiana and of the authority exercised under them by the aforesaid officials and the city of New Orleans being drawn in this case under the Constitution of the United States, and the supreme court of Louisiana having by final decree decided the said question in favor of their validity, your petitioner is entitled to a writ of error from the Supreme Court of the United States to have the decision re-examined by that honorable court.

Wherefore your petitioner prays that it may please your honor to allow a writ of error in the premises, returnable according to law, and the necessary citations to the defendants; and petitioner prays for all and general relief.

HENRY DENIS,
BRANCH K. MILLER,
Attorneys for Petitioner.

Writ of error allowed as prayed for, to operate as a supersedeas on bond, conditioned according to law, in the sum of one thousand dollars.

E. D. WHITE,
Associate Justice.

Washington, March 9th, 1896.

192½ [Endorsed:] No. 11861. Supreme court of Louisiana. The State of Louisiana *ex relatione* The Citizens' Bank of Louisiana *vs.* The Board of Assessors *et als.* Petition for writ of errors. Filed April 1, 1896. T. McC. Hyman, clerk.

193 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before

you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of Louisiana *ex relatione* The Citizens' Bank of Louisiana, plaintiff, and The Board of Assessors for the Parish of Orleans, The City of New Orleans, The State Tax-collector for the 1st District, Parish of Orleans, and The Recorder of Mortgages for the Parish of Orleans, defendants, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or
194 of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 10th day of March, in the year of our Lord one thousand eight hundred and ninety-six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
E. D. WHITE,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] No. 11861. Supreme court of Louisiana. State *ex rel.* Citizens' Bank of Louisiana *v.* The Board of Assessors *et als.* Writ of error. Filed April 1, 1896. T. McC. Hyman, clerk.

195 *Bond for Writ of Error.*

UNITED STATES OF AMERICA:

Know all men by these presents that we, The Citizens' Bank of Louisiana, by its president, G. W. Nott, as principal, and Hippolyte

Laroussini, as surety, are held and firmly bound, jointly and severally, unto The Board of Assessors for the Parish of Orleans, The City of New Orleans, The State Tax-collector for the First District, Parish of Orleans, and the Recorder of Mortgages for the Parish of Orleans in the sum of one thousand ($1,000.00) dollars, lawful money of the United States of America, to be paid to the said above-named parties, respondents in the suit of The State of Louisiana *ex rel.* Citizens' Bank of Louisiana *vs.* Board of Assessors *et als.*, No. 11861 of the supreme court of Louisiana, heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the — day of January, in the year of our Lord eighteen hundred and ninety-six.

Whereas the said Citizens' Bank of Louisiana having heretofore, to wit, on the — day of January, 1896, taken a writ of error from supreme court of the State of Louisiana from and to reverse the decree rendered on the sixth day of January, 1896, by the said court in the said suit of The State of Louisiana *ex rel.* Citizens' Bank of Louisiana *vs.* Board of Assessors *et als.*, No. 11861 of the docket of the supreme court of Louisiana:

Now, the condition of the above obligation is that if the above-bounden Citizens' Bank of Louisiana shall prosecute its said writ of error to effect and shall answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void;
196 otherwise to remain in full force and virtue.

(Signed) G. W. NOTT, *Pres't.* [L. S.]
" H. LAROUSSINI, *S.* [L. S.]
—— ——. [L. S.]

Signed, sealed, and delivered in the presence of—
—— ——.

Approved:
E. D. WHITE,
Associate Justice of the Supreme Court of the United States.

UNITED STATES OF AMERICA, *District of Louisiana,* } ss:

Personally appeared H. Laroussini, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans and is worth the full sum of one thousand dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) H. LAROUSSINI.

Subscribed and sworn before me this 14th day of January, 1896.

[SEAL.] (Signed) EDGAR GRIMA, *Not. Pub.*

197 Endorsed: No. 11861. Supreme court of Louisiana. State of Louisiana *ex rel.* Citizens' Bank of La. *vs.* Board of Assessors *et als.* Bond for writ of error. Filed April 1st, 1896. (Signed) T. McC. Hyman, clerk.

198 UNITED STATES OF AMERICA, *ss:*

To the Board of Assessors for the Parish of Orleans, the City of New Orleans, the State Tax-collector for the 1st District, Parish of Orleans, and the Recorder of Mortgages for the Parish of Orleans, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana, wherein The State of Louisiana *ex relatione* The Citizens' Bank of Louisiana is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, associate justice of the Supreme Court of the United States, this tenth day of March, in the year of our Lord one thousand eight hundred and ninety-six.

(Signed) E. D. WHITE,
Associate Justice of the Supreme Court of the United States.

198½ [Endorsed:] Filed April 1, 1896. T. McC. Hyman, clerk.

The service of the within citation is hereby accepted for all the defendants in error in the suit of The State of Louisiana *ex relatione* The Citizens' Bank of Louisiana *vs.* The Board of Assessors, &c., and others.

New Orleans, March 26th, 1896.

E. A. O'SULLIVAN,
Att'y of Board of Ass. & City Att'y.

March 30th, 1896.

M. J. CUNNINGHAM,
Att'y Gen'l of La.
R. LYONS,
Att'y State Tax-coll'r.
R. H. DOWNING,
Att'y for Recorder of Mortgs.

STATE OF LOUISIANA, }
Parish of Orleans. }

Personally came and appeared before me, the undersigned authority, E. A. O'Sullivan, attorney for the Board of Assessors for the Parish of Orleans and also city attorney for the City of New Orleans; M. J. Cunningham, attorney general for the State of Louisiana; R. Lyons, attorney for State Tax-collector for the First District, Parish of Orleans, and R. H. Downing, attorney for Recorder of Mortgages of

the Parish of Orleans, who, being all personally known to me, acknowledged to me that the foregoing signatures above are their genuine signatures, executed for the purpose above set forth.

Signed and acknowledged before me on this the 31st day of March, 1896.

[Seal of James C. Henriques, Notary Public, Parish of Orleans, La]

J. C. HENRIQUES,
Notary Public.

199 Supreme Court of the United States.

THE STATE OF LOUISIANA *ex Relatione* THE CITIZENS' BANK OF LOUISIANA
vs.
THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS and Others.

In error.

Of October term, in the year of our Lord one thousand eight hundred and ninety-five.

Afterwards, to wit, on the second Monday in October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Citizens' Bank of Louisiana, by *his* attorneys, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by virtue of the charter of said Citizens' Bank of Louisiana its capital is exempted from all taxation, State or municipal, as has been repeatedly declared and decreed by the courts of Louisiana, and again by the supreme court of Louisiana in the case at bar.

200 That also by virtue of the said charter the subscriptions of the stockholders of said Citizens' Bank of Louisiana to its capital stock are secured by mortgage upon their real estate, and, in case of non-payment of said subscriptions, the bank has the right to foreclose the mortgages and to buy in the mortgaged property.

That in such cases the said property becomes part of the capital of the bank, and is, as such, equally exempt from taxation.

That by the record aforesaid it appears that the supreme court of Louisiana has decided that the real estate thus bought in by the Citizens' Bank of Louisiana at the foreclosure of its mortgage upon the same does not become part of its capital, and therefore is not exempted from taxation.

That judgment was given by said supreme court of Louisiana on this point for said Board of Assessors, City of New Orleans, and others, whereas by the law of the land the said judgment ought to have been given for the Citizens' — of Louisiana and against said Board of Assessors, City of New Orleans, and others.

And the said Citizens' Bank of Louisiana prays that the judgment

aforesaid may be reversed, annulled, and altogether held for
201 nothing, and that the said real estate bought in by the Citizens' bank at the foreclosure of said mortgage may be decreed to form part of its capital, and as such exempt from taxation under the provisions of its charter.

HENRY DENIS,
BRANCH K. MILLER,
Attorneys for Plaintiff in Error.

201½ [Endorsed:] No. 11861. Supreme court of Louisiana. State of La. *ex rel.* Citizens' B'k of La. *vs.* Board of Assessors *et als.* Assignment of errors. Filed April 1, 1896. T. McC. Hyman, clerk. Henry Denis, B. K. Miller, att'ys.

202 *Certificate of the Clerk of the Supreme Court of the State of Louisiana.*

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana, do hereby certify that the foregoing 201 (two hundred and one) pages contain a full, true, and complete copy of the transcript of the proceedings had in the civil district court for the parish of Orleans in a certain suit wherein The State of Louisiana *ex rel.* Citizens' Bank of Louisiana was plaintiff and The Board of Assessors for the Parish of Orleans and others were defendants, and also of all the proceedings had in this supreme court on the appeal taken by said defendants, which appeal is now on the files thereof under No. 11861.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this sixth day of April, anno Domini one thousand eight hundred and ninety-six, and in the one hundred and twentieth year of the Independence of the United States of America.

Seal Supreme Court of the State of Louisiana.

T. McC. HYMAN, *Clerk.*

Endorsed on cover: Case No. 16,248. Louisiana supreme court. Term No., 483. The State of Lousiana *ex relatione* The Citizens' Bank of Louisiana, plaintiff in error, *vs.* The Board of Assessors for the Parish of Orleans, The City of New Orleans, *et al.* Filed April 10th, 1896.

(167-457)

Supreme Court, U.S.
D.
JAN 15 1897
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 483.

THE STATE OF LOUISIANA EX REL. CITIZENS' BANK OF LOUISIANA

vs.

THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS, THE CITY OF NEW ORLEANS, ET ALS.

IN ERROR TO THE SUPREME COURT OF LOUISIANA.

BRIEF FOR PLAINTIFF IN ERROR.

WM. A. MAURY,
HENRY DENIS,
BRANCH K. MILLER,
Of Counsel, &c.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 483.

THE STATE OF LOUISIANA EX REL. CITIZENS' BANK OF LOUISIANA

vs.

THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS, THE CITY OF NEW ORLEANS, ET ALS.

IN ERROR TO THE SUPREME COURT OF LOUISIANA.

BRIEF FOR PLAINTIFF IN ERROR.

A stipulation by counsel has been made to the effect that this cause shall, with the permission of the Court, be brought forward for argument with No. 108, the two causes to be argued as *one*.

As the questions arising in this cause are fully discussed in the brief filed in No. 108, it is necessary to do little more in this brief than refer to the other.

This cause was an application for a mandamus by the Citizens' Bank to be directed to the Board of Assessors for the Parish of Orleans, the State tax-collectors for the first district of New Orleans, the City of New Orleans and the recorder of mortgages for the parish of Orleans, and commanding that certain assessments for the years 1892 and 1893 for taxes on certain described real estate in the City of New Orleans shall be annulled and concelled, and that the inscriptions and recording of the same at the Mortgage Office in the City of New Orleans shall be erased and cancelled. (Rec., pp. 1–3.)

The property in question was incumbered by one of the stock mortgages described and frequently mentioned in the brief in No. 108.

The owner of the said real estate being in arrears to the Bank in a large sum for calls or demands for contribution on the shares of stock held by him, the Bank took the usual course of applying for executory process to foreclose the said stock mortgage, which process was accordingly issued, (Rec., pp. 54–60), and the property duly sold and conveyed to the Citizens' Bank as the last and best bidder. (Rec., pp. 81–86.)

The Bank was compelled to buy in the property or let it go at a ruinous sacrifice and to the detriment of the State of Louisiana which looks to the stock mortgages for protection against liability on her bonds lent to the Bank.

The Bank contends that the property thus bought in under special provisions of her charter represents so much of the Bank's capital stock, and, consequently, is exempt from taxation under the acts of 1833 and 1836.

The Bank also relied on the plea of *res judicata* and specially pleaded the same. (Rec., pp. 3, 4.)

The defendants made the same defenses as were made in No. 108:

The Court, after trial, ordered the writ of mandamus to issue as prayed. (Rec., pp. 8, 9.)

And thereupon the defendants appealed to the Supreme Court of the State. (Rec., p. 69.)

The Supreme Court, after sustaining relator's plea of *res judicata*, reversed the judgment on the ground that the property in question did not represent capital, and so was taxable. See the opinion of the Court, and its opinion on rehearing. (Rec., pp. 108–114.)

And thereupon a writ of error from this Court to the Supreme Court of Louisiana was applied for and allowed. (Rec., pp. 115, 116.)

WM. A. MAURY,
HENRY DENIS,
BRANCH K. MILLER,
Of Counsel, &c.

167-407

Office Supreme Court, U. S.
FILED.
JAN 18 1897
JAMES H. McKENNEY,
CLERK.

167-407

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 483.

THE STATE OF LOUISIANA ex RELATIONE THE CITIZENS' BANK OF LOUISIANA, PLAINTIFF IN ERROR,

vs.

THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS, THE CITY OF NEW ORLEANS, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

BRIEF IN BEHALF OF THE CITY OF NEW ORLEANS.

SAMUEL L. GILMORE,
City Attorney.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 483.

THE STATE OF LOUISIANA ex Relatione THE CITIZENS' BANK OF LOUISIANA, Plaintiff in Error,

vs.

THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS, THE CITY OF NEW ORLEANS, et al.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

BRIEF IN BEHALF OF THE CITY OF NEW ORLEANS.

I.

The right of defendants in error to urge want of jurisdiction in the Court of this cause being expressly reserved in the stipulation filed herein on Friday, January 15, 1897, we now respectfully submit that there is no Federal question involved in this cause.

In the first place, the petition of plaintiff in error, filed in the civil district court for the parish of Orleans, only alleges that by an act of the General Assembly of Louisiana of April 1, 1833, and an act of January 30, 1836, its capital, profits, and property were exempted from taxation for a valuable consideration, and that the exemption constituted a contract between the State and the plaintiff in error, which is protected from impairment by the State, both by the Constitution of the United States and the constitution of Louisiana, but does not allege that the defendants in error in assessing the property for the years 1892 and 1893, or in recording the assessments in the office of the recorder of mortgages, were acting or pretending to act under any law or ordinance which was an impairment of the alleged contract between the State and plaintiff in error, and does not allege that any law or ordinance impairing its alleged contract has ever been passed by the State of Louisiana or the city of New Orleans, and contains no prayer for a decree declaring any law of the State or ordinance of the city an impairment of its contract or asking that any law or ordinance be declared null and void.

Nor is there anything in the answer or return of the defendants in error raising a Federal question.

It is true that this return or answer urges as a defense that the term of exemption granted to plaintiff in error by the acts of 1833 and 1836 was voluntarily relinquished by the passage of act No. 79 of 1880 and the unconditional acceptance by plaintiff in error of said act, and that act No. 40 of 1874, extending the charter of the plaintiff in error, did not, and could not constitutionally, extend the exemp-

tion claimed by plaintiff in error beyond the year 1886 ; but this answer or return did not assert the passage of any act or ordnance since 1833 or 1836 as having any effect *proprio vigore* upon the exemption granted to plaintiff in error by the acts of 1833 and 1836.

In the second place, the supreme court of Louisiana, in its decision of this cause, simply placed a construction favorable to the defendants in error upon the charter of plaintiff in error without considering at all the effect of any subsequent law or ordinance upon the exemption claimed, except by merely referring, in the opinion on the rehearing, to the act of 1880 and its acceptance by the plaintiff in error as an additional argument supporting the Court's position that the property involved was not part of the capital of plaintiff in error.

This case is similar to that of Water Works Co. *vs.* Refinery Co., 125 U. S., 32, and the writ of error should be denied.

II.

As the argument in the case of The City of New Orleans, The Board of Assessors, *et al. vs.* The Citizens' Bank of Louisiana, No. 108, October term, 1896, covers the merits of this case, we need not repeat it.

The writer, who was not of counsel for the city of New Orleans when this cause was argued in the State courts, desires to add that the references made in the opinions to the exemption of the original capital of the plaintiff in error, without distinguishing it from the capital of the banking

department, as will appear by the whole text of the opinions, were entirely foreign to the case.

We therefore ask that the writ of error be denied herein, and if the Court should be of opinion that it has jurisdiction, that the Court decree against the exemption claimed and order that the suit be dismissed.

SAMUEL L. GILMORE,
City Attorney.

Office Supreme Court
FILED
JAN 11 1897
JAMES H. McKENNEY
Clerk

167-407

No. 483.

SUPREME COURT OF THE UNITED STATES.

October Term 1896.

THE STATE OF LOUISIANA, EX RELATIONE, THE CITIZENS' BANK OF LOUISIANA, PLAINTIFF IN ERROR,

versus

THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS, THE CITY OF NEW ORLEANS ET AL.

In Error to the Supreme Court of the State of Louisiana.

BRIEF OF APPELLEES.

M. J. CUNNINGHAM,
Attorney General.
F. C. ZACHARIE,
Atty. for Board of Assessors and Tax Collectors of the Parish of Orleans.
ALEX. PORTER MORSE,
Of Counsel.

No. 483.

SUPREME COURT OF THE UNITED STATES.

October Term 1896.

THE STATE OF LOUISIANA, EX RELATIONE, THE CITIZENS' BANK OF LOUISIANA, PLAINTIFF IN ERROR,

versus

THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS, THE CITY OF NEW ORLEANS ET AL.

In Error to the Supreme Court of the State of Louisiana.

BRIEF OF APPELLEES.

STATEMENT OF PLEADINGS.

This is a suit by way of *mandamus proceedings* against the State Tax Collectors, Board of Assessors of the City of New Orleans and the Recorder

of Mortgages of the Parish of Orleans, to compel them to annul and cancel certain assessments, on certain property in the City of New Orleans, for taxes, State and City, for the years 1892 and 1893, belonging to the relators, the plaintiffs in error, and appellants here. The basis claimed for the mandamus, is that the property in question is exempt from taxation, under the charter of the relator, the Citizens' Bank. The property in question is admitted to have been purchased, under foreclosure proceedings by the Bank, through its mortgage or land branch. The answers of the defendants deny the exemption claimed.

The relators interposed the plea of *res adjudicata* based on four prior decisions, one of the Supreme Court of the State of Louisiana, and three others of an inferior State Court, the Civil District for the Parish of Orleans. After evidence and hearing in the Civil District Court, Div. D, where the present suit was entered, the mandamus was made peremptory.

There were some other proceedings, which however, it is not necessary to mention, as they do not materially bear on the questions involved. On appeal to the Supreme Court of the State of Louisiana that judgment and decree was reversed, and the property in question declared to be liable to taxation. From this decision of the State Supreme Court, the relators have appealed, by way of writ of error, to this Honorable Court.

This they do under the claim in their original petition that the alleged "exemption, therefore, constituted a contract between the State and this relator, which is protected from impairment both by the Constitution of the United States and the Constitution of Louisiana," and claim, therefore, that a federal question is involved.

ARGUMENT.

By agreement of counsel filed in this cause, and No. 108 of the present docket of this Honorable Court, it has been stipulated that these two cases shall be argued together before your Honors. The two cases, in some respects and in particular points, involve the same questions. No. 108 embraces the whole question of the exemption of the Bank from taxation, whereas this case (No. 483) only puts at issue the question as to the extension of the exemption to property purchased by the Bank under foreclosures of mortgages. We therefore submit as a part of this brief all that we have argued and said in our larger brief filed in No. 108, insofar as applicable to the particular question involved here. Whatever we have said therein on the broader question of entire exemption *vel non* of the Bank, applies with equal force in many respects to the exemption of the particular kind of property, the

status of which for tax purposes is involved in this suit.

The greater question thus, to a large extent, embraces the lesser. We propose now only to supplement the authorities cited in our brief in case 108 by a few others, which we deem especially applicable to the particular question at issue here.

The surplus accumulation by a Bank whose capital is exempt from taxation by the terms of its charter, does not share the exemption, and may be lawfully taxed. 161 U. S. 134.

The capital stock of a corporation and the shares into which such stock may be divided and held by individual shareholders are two distinct pieces of property. The capital stock and the shares of stock in the hands of the shareholders may both be taxed and it is not double taxation. 95 U. S. 687, citing 3 Wallace, 573; 4 Wallace, 244.

A clause in the charter of a bank limiting the amount of tax upon the shares of stock does not apply to, or cover the case of the capital stock of the corporation, or its surplus or accumulated profits, but such capital stock, surplus and accumulated profits are liable to be taxed as the State may determine. 161 U. S. 149.

In all these cases the Court argues and reasons *in extenso* on the principle that exemptions are to be strictly construed. It further differentiates the taxes laid on the various kinds of property of a cor-

poration, and confines and limits the exemption *stricti juris* to that species of property which is plainly and specifically covered by the letter and spirit of the exemption, and refuses to extend the immunity, by construction or implication, to any other species of property than that which falls directly under the exception to the taxing power. These decisions only confirm the uniform ruling of the U. S. Supreme Court in cases of exemption from taxation as evidenced in 16 Howard, 435, 436; 22 Wallace, 575; 97 U. S. 666; 98 U. S. 564. The jurisprudence of the State of Louisiana is in thorough accord with this principle, 34 La. An. 955, 956, 957; 42 La. An. 1102, 1121. In 43 La. An. 1108 the Supreme Court said: "The well known and universally prevailing principle of interpretation that statutes comprising exemptions should be strictly construed, is specially emphasized in thejurisprudence of this State."

We therefore submit if your Honors do not, perchance, agree with us in our argument and conclusions contained in our brief in 108, that the Citizens' Bank has no exemption at all, for any of its property, capital stock, shares or any other kind; yet in regard to the particular issue on the present case it seems impossible to us for your Honors to decide that real estate acquired by the Bank by purchase under foreclosnre proceedings will be exempt. Even if it be granted for the sake of argu-

ment, that the original exemption is still in force *pleno vigore*; that the Act of 1874, legally and constitutionally prolonged and received it; and that the Act of 1880 in no wise affected its continuance, yet we confidently maintain that the exemption by the most latitudinarian construction and implication can not be stretched to cover such property as is embraced in this cause.

Such a contention has never heretofore been advanced in regard to property acquired by the Bank, nor has the Bank, up to the institution of these suits, disputed its liability to taxation, or failed to pay its *quota* of taxes, levied on its property thus circumstanced. From the date of its original charter in 1833 up to the institution of these suits, the Bank has never questioned or disputed the legality of the tax upon this species of property, nor has it failed to pay the taxes levied thereon.

All of which is respectfully submitted.

M. J. CUNNINGHAM,
Attorney General.

F. C. ZACHARIE,
Attorney for Tax Collectors and Board of Assessors, Parish of Orleans.

ALEX. PORTER MORSE,
Of Counsel.

Office Supreme Court, U. S.
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CLERK.

167-371

167-407

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 108.

THE CITY OF NEW ORLEANS ET AL., APPELLANTS,

vs.

THE CITIZENS' BANK OF LOUISIANA.

AND

No. 483.

THE STATE OF LOUISIANA EX REL. THE CITIZENS' BANK OF LOUISIANA, PLAINTIFF IN ERROR,

vs.

THE BOARD OF ASSESSORS OF THE PARISH OF ORLEANS ET AL.

SUPPLEMENTAL BRIEF ON BEHALF OF STATE TAX COLLECTORS AND ASSESSORS.

M. J. CUNNINGHAM,
Attorney General of Louisiana.
F. C. ZACHARIE,
Attorney for Tax Collectors and Assessors.

ALEXANDER PORTER MORSE,
Of Counsel.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 108.

THE CITY OF NEW ORLEANS ET ALS.

vs.

THE CITIZENS' BANK OF LOUISIANA.

No. 483.

STATE OF LOUISIANA EX REL. CITIZENS' BANK OF LOUISIANA

vs.

BOARD OF ASSESSORS ET ALS.

SUPPLEMENTAL BRIEF ON BEHALF OF STATE TAX COLLECTORS AND ASSESSORS.

In further support of the syllabus of our original brief in No. 108 we desire to submit the following authorities and considerations, intended, like the original, for use in both cases.

To avoid the irresistible effect of article 118 of the constitution of 1868, which was in force in Louisiana in 1874

when the legislature passed act 40 extending the charter of the bank from 1884 to 1911, under which article the legislature did not have the power to grant the exemption claimed, although the charter was granted by the act of 1833 for fifty-one years from its approval, April 1, 1833, in explicit language, and although the exemption was granted in that same clause and followed by that limitation, counsel for complainant have been forced to contend and the learned judge of the circuit court was forced to hold that the legislature in 1833 and 1836 had in contemplation a continued existence for the bank beyond the term fixed in its charter; that it pledged the faith of the State not to tax the corporation so long as its existence continued, and that the bank was not affected by the change in the public policy of the State as evidenced by the provisions of the constitutions of 1868 and 1879.

This position is entirely unsustained by any law or precedent, and it is destructive of the basic principle upon which all corporations are created and all exemptions are granted. It destroys the principle that corporations have no greater powers nor longer life, and exemptions have no greater scope nor duration than are clearly conferred and fixed in the statute, all doubts being resolved in favor of the public and against the grantee.

Besides, the language of the statute is too plain for inferences. In order to show beyond question the exact term for which the exemption was granted and the corporation created, and incidentally the consideration for the exemption, it is only necessary to quote section 30 of the act of 1833, which reads as follows:

"SEC. 30. *Be it further enacted, &c.* That at the expiration of the said corporation, as fixed by this act, if the said corporation shall have acquired the rights, privileges and advantages mentioned in the fourteenth section of this act, and shall have had the peaceable and quiet enjoyment thereof, it shall be the duty of the said corporation to de-

liver up to the State of Louisiana all the canals, and the appurtenances thereto or dependencies thereon, mentioned in the fifteenth and eighteenth sections of the act of incorporation of the Lake Borgne Navigation Company, to which it is, by the said fourteenth section of this act, authorized and empowered to subscribe on the conditions therein mentioned; also all roads, of whatever description, that may have been made or executed, as well as all the machinery, cars for transportation, and all other dependencies thereon, together with all the rights of tolls, and all and every other privilege attached thereto, which shall then become the full property of the said State; in consideration of which said cession, or in lieu thereof, the bonus mentioned in the fifteenth section of this act, the said corporation shall, during its existence, be exempt in its capital, and property which it may acquire by virtue of any of the provisions of this act, from all taxes to the State, or to any parish or corporation, created by law of this State, and this charter shall continue for and during the space of fifty-one years from the passage thereof."

It will be seen that the period of the existence of the corporation is definitely fixed in the foregoing section, and that the fixing of the term immediately follows the stipulation as to the exemption in the same sentence, only divided from it by a comma, both being embraced under the same semicolon subdivision of the sentence and section. The term of existence is fixed and must be strictly construed as to all corporations, but the legislature, in this case, seemed to so fix it as explaining and controlling the term of the exemption as expressed.

This is the only law in the books, except the act of 1836, that makes any reference to the duration of the exemption, and the only law, except act 40 of 1874, which makes any reference to the term of existence of the corporation; but the act of 1836 modified the exemption; section 16 repealed the act of 1833 and all laws inconsistent with the provisions of the act of 1836; and section 4, which modified and superseded the exemption of 1833, reads as follows:

"SEC. 4. *Be it further enacted, &c.* That the State shall be entitled to the same interest in the profits of the Citizens' Bank of Louisiana, as in the Union Bank of Louisiana, to wit: one-sixth if twelve millions of bonds are taken, one-twelfth if six millions are taken, one twenty-fourth if only three millions are taken, which profits shall be paid into the treasury of the State, at the same time and in the same proportion as those belonging to the stockholders; the whole amount of those profits shall be appropriated to the benefit of the free schools agreeably to the population of each parish, which shall be ascertained by a census taken every four years in such a manner as the legislature may hereafter designate; and the capital of said bank shall be exempt from any tax laid by the State, or by any parish or body politic under the authority of the State, during the continuance of its charter."

In order to fully appreciate the change made by the above-quoted section, taken in connection with other provisions of the act, we insert a copy of section 7:

"SEC. 7. *Be it further enacted, &c.* That the fourteenth section of the act to incorporate the Citizens' Bank, authorizing the subscription to the capital stock of the corporation known by the name of Lake Borgne Navigation Company, the fifteenth section of said act fixing a penalty for not digging the canal therein described, and all the provisions in said act relative thereto, be and are hereby repealed."

It will be seen that by the above repeal the bank was deprived of all right, power, or interest to build the canal, and incidentally the railroads, which by the terms of section 30 of the act of 1833 was the consideration for the exemption therein stipulated. As the consideration therefore failed, as a consequence the exemption lapsed; and if the exemption continued it was without consideration and could not constitute a basis of contractual rights protected by the Federal Constitution. There was no partial failure or change of consideration; it was complete.

Section 4 of the act of 1836 made a complete change in the exemption granted by section 30 of the act of 1836, and also entirely changed the consideration required therefor. The bank was no longer under any obligation to turn over any canal or railroad to the State or pay the cash penalty required in lieu thereof, but was required to divide its profits with the State. Although this consideration actually failed also, the legal obligation stood to the end of the charter; and this is the consideration had in view by counsel and court whenever the contractual relation has been assumed or conceded. As a matter of fact, we do not think the question has ever been adjudicated. But surely a consideration which completely failed cannot constitute the basis of contractual rights for 27 years exemption in addition to the 51 originally contracted for said failed consideration. The consideration and exemption stipulated by section 30 of the act of 1833 were completely changed and superseded by section 4 of the act of 1836, and since then they have had no existence. As the consideration was changed the exemption stipulated therefor was also changed and superseded.

As before maintained, we think the term of the existence of the corporation and the continuance of its exemption were definitely fixed by section 30 at 51 years. The only existence or life of a corporation is the term of its charter. After the expiration of that term its affairs can be liquidated, but it has no legal existence as a live corporation. Notwithstanding this indisputable legal proposition, complainant persists in inferring a legislative intent to continue the exemption during such prolonged existence as might be thereafter conferred. This inference is sought to be drawn from the expression in section 30 that the bank should be exempt "during its existence," which is contended to mean something more than the term of its charter. Exemptions from taxation, as well as corporate existence, cannot be based

upon inferences; unequivocal legislative provision, free from all doubt, will alone suffice.

But all excuse for such a pretense is destroyed by the provision of section 4 of the act of 1836. There it is stipulated in unequivocal language that the bank's capital shall be exempt, not during its existence, but "during the continuance of its charter." This surely means the term fixed in its charter, and nothing more.

Aside from the specific provisions of section 30 of the act of 1833, fixing the term of the charter and exemption, there is nothing in the other parts of either act to justify the contention. Examination into the several provisions of the charter demonstrates that the State never contemplated the shackling of its taxing power with regard to this bank beyond the period of fifty-one years.

Let us first examine the charter of 1833. That statute provided for a bank whose capital was to be procured by the negotiation of the bonds of the bank (sections 1–4), which bonds were separated into *five* series, payable in 14, 23, 32, 41, and 50 years from the date of the act. The payment of these bonds was secured by a pledge of the mortgages by which the subscribers to the stock of the bank guaranteed their subscriptions (sections 3, 4). Every stockholder, upon deposit and pledge of his certificate of stock, was entitled to a credit equal to one-half of the total amount of his stock, provided that the payment of the principal of any sum or sums thus lent to any stockholder should be so fixed and arranged that at least one year before any partial reimbursement or payment was to be made of the bonds of the corporation an equal proportion of any loan or loans so made to any stockholder should be paid and extinguished. (Section 11.)

Provision was made for dividends as follows (section 29):

* * * "and whereas the bonds which the said corporation is authorized to emit are redeemable in five series at five distinct periods as hereinbefore provided, it shall be

the duty of the directors immediately after the payment and redemption of each series of the said bonds to divide among the stockholders one-fifth of the profits made up to that time, if any there be, after deducting one-fifth of the costs of all works made for the establishment of roads and canals which are authorized by this act." * * *

While it was never contemplated that the stockholders would be called upon to pay any portion of their subscriptions, which, it will be noticed, aggregated an amount exceeding the authorized capital, yet it was distinctly provided (section 24) that the property mortgaged to secure the stock subscriptions could be seized and sold at any time, and section 4, providing for the pledge to the bondholders of the mortgages given by the stockholders, grants at all times to any or all of the bondholders "the most summary process of the law on the said mortgages to enforce the payment of the whole or any part thereof in case of non-payment." The maturity of the bonds, therefore, fixed the maturity of the securities. The capital of the bank was to be obtained by the negotiation of its bonds, and the money thus obtained was to be loaned out to the stockholders, each stockholder being entitled to a credit equal to one-half of the total amount of his stock; but the amount so loaned was to be returned in proportion to the amount of the bonds to be redeemed, and was also to be returned one year prior to the respective maturities of the five series. Thus the loans to the stockholders would be paid at the expiration of the forty-ninth year of the charter, and the same limit of payment was provided in section 11 for the balances on all mortgage loans.

Clearly, all these provisions are evidences of the prospective cessation of business on the part of the bank, and conclusive that all that the legislature had in contemplation was a corporation whose existence was to last but fifty-one years. For why otherwise these enactments as to the forty-ninth year? By that time the borrowed capital of the bank

would have been returned to those from whom it had been obtained. It was never intended that the stock subscriptions were to be paid. They were to serve no purpose other than as security for repayment of the bonds and to enable the shareholders to participate in the dividends and ultimate division of assets. Of these profits, as stated, the shareholders were to receive one-fifth at the maturity of each series of bonds.

All things thus pointing to the end of the bank's existence, section 30 follows logically by providing for the delivery by this dying corporation of its canals, roads, machinery, cars, etc., which the State declares to be a sufficient consideration for the exemption granted the bank during its existence. Is it reasonable to suppose that the legislature when it passed, and the governor when he signed, this bill to incorporate this bank ever dreamed that they were binding the State for all futurity to grant this exemption to this bank? Is not both the natural and the salient meaning of the words this, viz., that the "existence" of the bank signified the existence as therein specified—that is, an existence of fifty-one years? The obvious meaning of the statute is that a corporation with certain privileges was created for a specified length of time, and we submit that it would be a most tortured and unnatural construction to hold that the General Assembly meant to legislate for all time to come.

But to make assurance doubly sure let us continue the discussion of this branch of the case by comparing the act of 1836 with that of 1833.

The method of obtaining the capital under the act of 1833 had proved impracticable, and the amendatory and supplementary act of 1836 was passed, by which very material changes were made in the charter of the bank; * * * "the consideration upon which the exemption had been granted ceased and failed," and the exemption granted by the act of 1833 had been "modified and super-

seded by that granted by section 4 of the act of 1836" (32 Louisiana Annual, p. 241). The State was to issue bonds in favor of the bank, to be secured by mortgages granted by the stockholders, and the State was to receive a certain interest in the bank's profits, in consideration of which the capital *only* was to be exempt from taxation during the continuance of the charter. (See section 30 of the act of 1833, and sections 4 and 16 of the act of 1836.)

Is it not conclusive that the limit of the exemption period was clearly and unmistakably fixed in the act of 1836 to be during the continuance of the bank's charter, which charter by the act of 1833 was to continue for and during the space of fifty-one years from 1833? That any provisions of the act of 1833 conflicting with those of the act of 1836 were repealed?

How can it be contended that under such provisions as these, and in defiance of public policy, as enunciated by the people in constitutional enactments, the bank is to be forever beyond the taxing power of the State?

If it be possible that a doubt can exist upon this subject, then we refer to the authorities that the grant asserted must be explicit, and that every presumption is against the alleged exemptions.

22 Wallace, p. 575:

"The taxing power is vital to the functions of government. It helps to sustain the social compact and to give it efficacy. It is intended to promote the general welfare. It reaches the interests of every member of the community. It may be restrained by contract in special cases for the public good, where such contracts are not forbidden; but the contract must be shown to exist. There is no presumption in its favor. Every reasonable doubt should be resolved against it. Where it exists it is to be rigidly scrutinized, and never permitted to extend, either in scope or duration, beyond what the terms of the concession clearly require. It is in derogation of public right and narrows a trust created for the good of all."

We extract from the opinion of Mr. Chief Justice Taney, 16 Howard, pp. 435–436:

"The rule of construction in cases of this kind has been well settled by this Court. The grant of privileges and exemptions to a corporation are strictly construed against the corporation and in favor of the public. Nothing passes but what is granted in clear and explicit terms; and neither the right of taxation nor any other power of sovereignty which the community have an interest in preserving undiminished will be held by the Court to be surrendered unless the intention to surrender is manifested by words too plain to be mistaken. This is the rule laid down in the case of Billings *vs.* The Providence Bank and reaffirmed in the case of the Charles River Bridge Company.

"Nor does the rule rest merely on the authority of adjudged cases. It is founded in principles of justice and necessary for the safety and well-being of every State in the Union, for it is a matter of public history, which this court cannot refuse to notice, that almost every bill for the incorporation of banking companies, insurance and trust companies, railroad companies, or other corporations is drawn originally by the parties who are personally interested in obtaining the charter, and that they are often passed by the legislature in the last days of its session, when, from the nature of our political institutions, the business is unavoidably transacted in a hurried manner, and it is impossible that every member can deliberately examine every provision in every bill upon which he is called on to act.

"On the other hand, those who accept the charter have abundant time to examine and consider its provisions, before they invest their money; and if they mean to claim under it any peculiar privileges or any exemption from the burden of taxation, it is their duty to see that the right or exemption they intend to claim is granted in clear and unambiguous language. The authority which this Court is bound under the Constitution of the United States to exercise in cases of this kind is one of its most delicate and important duties; and if individuals choose to accept a charter in which the words used are susceptible of different meanings—or might have been considered by the representatives of the State as words of legislation only, and subject to future revision and repeal, and not as words of

contract—the parties who accept it have no just right to call upon this Court to exercise its high power over a State upon doubtful or ambiguous words, nor upon any supposed equitable construction or inferences made from other provisions in the act of incorporation. If there are equitable considerations in their favor, the application should be made to the State and not to this Court. If they come here to claim an exemption from their equal share of the public burdens or any peculiar exemption or privilege, they must show their title to it, and that title must be shown by plain and unequivocal language." (97 U. S., 666; 98 U. S., 564; 34 Louisiana Annual, 955, 956, 957; 42 Louisiana Annual, 1102, 1121.)

"The well-known and universally prevailing principle of interpretation that statutes comprising exemptions should be strictly construed is specially emphasized in the jurisprudence of this State." (43 Louisiana Annual, 1108.)

In the case of Rice *vs.* Railroad Co., 1 Black, 360, defendant maintained that a grant should be construed against the grantor, but the Court held the contrary in the case of legislative grants. On pages 379 and 380 the Court says:

"These considerations tend so strongly to support the latter theory that, even admitting the rule of construction assumed by the defendants, that the grant must be construed most strongly against the grantor, we would still be constrained to hold that the second proposition submitted by them cannot be sustained. Legislative grants undoubtedly must be interpreted, if practicable, so as to effect the intention of the grantor; but if the words are ambiguous, the true rule of construction is the reverse of that assumed by the defendants, as is well settled by repeated decisions of this Court. (Charles River Bridge *vs.* Warren Bridge, 11 Pet., 544.)

"Most of the cases bearing upon the point previously decided were very carefully reviewed on that occasion, and consequently it is not necessary to refer to them. Judge Story dissented from the views of the majority of the judges, but the opinion of the Court has since that time been constantly followed. Later decisions of this Court regard the rule as settled that public grants are to be construed strictly,

and that nothing passes by implication. That rule was applied in the case of Mills *et al. vs.* St. Clair County (8 How., 581), and the Court say the rule is that if the meaning of the words be doubtful in a grant designed to be a general benefit to the public, that they shall be taken most strongly against the grantee and for the Government, and therefore should not be extended by implication in favor of the grantee beyond the natural and obvious meaning of the words employed; and if those do not support the right claimed, it must fall. Any ambiguity in the terms of the contract, say the court in the case of The Richmond R. R. *vs.* Louisa R. R. Co. (13 How., 81), must operate against the corporation and in favor of the public, and the corporation can claim nothing but what is given by the act (Perrine *vs.* Chesapeake Canal Co., 9 How., 192). Taken together, these several cases may be regarded as establishing the general doctrine that whenever privileges are granted to a corporation and the grant comes under revision in the courts, such privileges are to be strictly construed against the corporation and in favor of the public, and that nothing passes but what is granted in clear and explicit terms. (Ohio Life and Trust Co. *vs.* Debolt (16 How., 435); Com. *vs.* The Erie and N. E. Railroad Co. (27 Penn., 339); Stourbridge *vs.* Wheeley (2 Barn. & Ad., 792); Parker *vs.* Great W. Railway Co. (7 M. & Gr., 253)."

In Railroad Co. *vs.* Litchfield, 23 How., 66, in passing upon a construction urged of certain terms of a grant, on pages 88 and 89 of the decision, this Court says:

"Of this we have no doubt; but if we had doubts from any obscurity of the act of Congress, a settled rule of construction would determine the controversy. All grants of this description are strictly construed *against* the grantees. Nothing passes but what is conveyed in clear and explicit language, and as the rights here claimed are derived entirely from the act of Congress, the donation stands on the same footing of a grant by the public to a private company, the terms of which must be plainly expressed in the statute, and if not thus expressed they cannot be implied. (Charles River Bridge *vs.* Warren Bridge, 11 Peters, 420.)

"We concur with the following citation and reasoning of the plaintiff's counsel, to wit: Lord Ellenborough, in his

judgment in Goldart *vs.* Gladstone, 1 East., 675 (an action for Liverpool dock dues), says: 'If the words would fairly admit of different meanings, it would be right to adopt that which is more favorable to the interest of the public and against that of the company, because the company, in bargaining with the public, ought to take care to express distinctly what payments they are to receive, and because the public ought not to be charged unless it be clear that it was so intended.'

"The reason of the above rule is obvious—parties seeking grants for private purposes usually draw the bills making them. If they do not make the language sufficiently explicit and clear to pass everything that is intended to be passed, it is their own fault; while, on the other hand, such a construction has a tendency to prevent parties from inserting ambiguous language for the purpose of taking by ingenious interpretation and insinuation that which cannot be obtained by plain and express terms."

In R'y & Nav. Co. *vs.* R'y Co., 130 U. S., 1, in maintaining the well-recognized doctrine that corporations have only such powers as are conferred by law, this Court, on page 20, says:

"It may be considered as the established doctrine of this Court in regard to the powers of corporations that they are such and such only as are conferred upon them by the acts of the legislatures of the several States under which they are organized. A corporation in this country, whatever it may have been in England at a time when the Crown exercised the right of creating such bodies, can only have an existence under the express law of the State or sovereignty by which it is created, and these powers, where they do not relate to municipal corporations exercising authority conferred solely for the benefit of the public, and in some sense parts of the body politic of the State, have in this country until within recent years always been conferred by special acts of the legislative body under which they claim to exist; but the rapid growth of corporations which have come to take a part in all or nearly all of the business operations of the country, and especially in enterprises requiring large aggregation of capital and individual energy, as well as their success in meeting the needs of a vast number

of most important commercial relations, have demanded the serious attention and consideration of law-makers; and while valuable services have been rendered to the public by this class of organizations, which have stimulated their formation by numerous special acts, it came at last to be perceived that they were attended by many evils in their operations as well as much good, and that the hasty manner in which they were created by the legislatures, sometimes with exclusive privileges, often without due consideration, and under the influence of improper motives, frequently lead to bad results."

And on page 26 this Court says: "It is to be remembered that where a statute making a grant of property or of powers, or of franchises to a private individual or a private corporation, becomes the subject of construction as regards the extent of the grant, the universal rule is that in doubtful points the construction shall be against the grantee and in favor of the government or the general public. As was said in the case of Charles River Bridge *vs.* Warren Bridge, 11 Pet., 420, in this Court, the principle is recognized that in grants by the public nothing passes by implication. (See, also, Dubuque and Pacific Railroad Co. *vs.* Litchfield, 23 How., 66; Turnpike Co. *vs.* Illinois, 96 U. S., 63.)"

A clause in the charter of a bank limiting the amount of tax upon the shares of stock does not apply to or cover the case of the capital stock of the corporation or its surplus and accumulated profits, but such capital stock, surplus, and accumulated profits are liable to be taxed as the State may determine. (161 U. S., 149.)

When not otherwise exempted, the capital stock of a corporation and its shares in the hands of shareholders may both be taxed, and if so taxed it is not double taxation. The capital stock of a corporation and the shares into which such stock may be divided and held by individual shareholders are two distinct pieces of property. The capital stock and the shares of stock in the hands of the share-

holders may both be taxed, and it is not double taxation. (Citing 3 Wall., 573, and 4 Wall., 244; cited in 95 U. S., 687; 161 U. S., 134).

The surplus accumulated by a bank whose capital is exempt from taxation by the terms of its charter does not share that exemption and may be lawfully taxed. (161 U. S., 134.)

On pages 146, 147, 148 this Court says:

"These cases show the principle upon which is founded the rule that a claim for exemption from taxation must be clearly made out. Taxes being the sole means by which sovereignties can maintain their existence, any claim on the part of any one to be exempt from the full payment of his share of taxes on any portion of his property must on that account be clearly defined and founded upon plain language. There must be no doubt or ambiguity in the language used upon which the claim to the exemption is founded. It has been said that a well-founded doubt is fatal to the claim. No implication will be indulged in for the purpose of construing the language used as giving the claim for exemption, where such claim is not founded upon the plain and clearly expressed intention of the taxing power.

"The capital stock of a corporation and the shares into which such stock may be divided and held by individual shareholders are two distinct pieces of property. The capital stock and the shares of stock in the hands of the shareholders may both be taxed, and it is not double taxation. (Van Allen *vs.* Assessors, 3 Wall., 573; People *vs.* Commissioners, 4 Wall., 244, cited in Farrington *vs.* Tennessee, 95 U. S., 687.)

"This statement has been reiterated many times in various decisions by this Court, and it is not now disputed by any one. In the case last cited Mr. Justice Swayne, in delivering the opinion of the Court, enumerated many objects liable to be taxed other than the capital stock of a corporation, and among them he instanced (1) the franchise to be a corporation; (2) the accumulated earnings; (3) profits and dividends; (4) real estate belonging to the corporation and necessary for its business; and he adds that 'this enumeration shows the searching and comprehensive taxation

to which such institutions are subjected where there is no protection by previous compact.' And in Tennessee *vs.* Whitworth, 117 U. S., 129, at p. 136, Mr. Chief Justice Waite, in delivering the opinion of the Court, says: 'That in corporations four elements of taxable value are sometimes found: First, the franchise; second, the capital stock in the hands of the corporation; third, the corporate property; and, fourth, the shares of capital stock in the hands of individual stockholders.'

"The surplus belonging to this bank is 'corporate property,' and is distinct from the capital stock in the hands of the corporation. The exemption, in terms, is upon the payment of an annual tax of one-half of one per cent. upon each share of the capital stock, which shall be in lieu of all other taxes. Exemption is not, in our judgment, greater in its scope than the subject of the tax. Recognizing, as we do, that there is a different property than that which is described as capital stock from that which is described as corporate property other than capital stock, and remembering the necessity there is for a clear expression of the intention to exempt before the exemption will be granted, we must hold that the surplus has not been granted exemption by the clause contained in the charter under discussion. The very name of surplus implies a difference. There is a capital stock and there is a surplus over, above, and beyond the capital stock, which surplus is the property of the bank until it is divided among stockholders.

"The case of Bank *vs.* Tennessee, 104 U. S., 493, does not hold to the contrary of this doctrine. This question was not therein discussed or decided. The question which was decided related only to the taxation of real property not used by the bank in its business, and it was held liable to taxation.

"The case is no authority for the proposition contended for here, namely, that the whole surplus of this bank is exempt from taxation. No individual shareholder has any legal right to claim any portion of this surplus; until divided by the board of directors it remains the property of the corporation itself, and in the sense in which the words 'capital stock' are used in the exemption clause the surplus does not form any part thereof."

We could cite authorities to an indefinite extent to sustain this proposition as to the strict construction of such grants against the grantee, but the foregoing are certainly sufficient.

It is argued in behalf of complainant that the bank is to be regarded as a State instrumentality to effect a public purpose, and therefore not within the purview of article 118 of the constitution of 1868.

If this case were placed upon this ground and could complainant's argument be sustained, then clearly no question of impaired contractual obligation would be presented, and the foundation for the court's jurisdiction in a controversy between citizens of the same State would be wanting; but the bank goes beyond this pretension of public character and, alleging a contract, invokes the provision of the Federal Constitution against the impairment of the obligation.

The claim that the bank has a public character and is therefore not subject to article 118 of the constitution of 1868 and the claim as to the impairment of the obligation of complainant's contract are destructive of each other. The argument, however, as to the character of the bank is met by the following citation from Mr. Justice Story's language in the Dartmouth College case, 4 Wheaton, 668, 669:

"Public corporations are generally esteemed such as exist for public political purposes only, such as towns, cities, parishes, and counties; and in many respects they are so, although they involve some private interests; but, strictly speaking, public corporations are such only as are founded by the Government for public purposes, where the whole interests belong also to the Government. If, therefore, the foundation be private, though under the charter of the Government, the corporation is private, however extensive the uses may be to which it is devoted, either by the bounty of the founder or the nature and objects of the institution. For instance, a bank created by the Government for its own uses, whose stock is exclusively owned by the Government, is in the strictest sense a public corporation; so a hospital created and endowed by the Government for general char-

ity; but a bank whose stock is owned by private persons is a private corporation, although it is erected by the Government and its objects and operations partake of a public nature. The same doctrine may be affirmed of insurance, canal, bridge, and turnpike companies. In all these cases the uses may, in a certain sense, be called public, but the corporations are private, as much so, indeed, as if the franchises were vested in a single person."

It is, however, not conceded that the Citizens' bank has been beneficial to the public. Attention is invited to the case of Prescott *vs.* Cooper, 37 Louisiana Annual, p. 557, where the supreme court of Louisiana refers to such institutions as the complainant, popularly known as the property banks, as "those phenomenal monuments of her" (the State's) "folly."

We fail to find where the State has guaranteed the bank as an instrumentality for the bondholders. Yet had it done so, the bank's corporate existence could be prolonged without continuing the exemption, as the exemption is not even of the nature of banking institutions. The validity of act 40 of 1874 is not impugned; on the contrary, we accord to it all the effect which it can constitutionally have, but we deny that the statute can override the constitution.

Act 40 of 1874, providing for the prolongation only of the corporate life, remained necessarily dormant until the date of expiration fixed in the original charter, viz., the year 1884; consequently there is error when counsel speaks of an alleged acquiescence of "twenty years" in the act of 1874, although no duration of official inaction could nullify the constitutional prohibition.

Article 203 of the constitution of Louisiana of 1879 provides that all property shall be taxed in proportion to its value, and article 207 of the same constitution provides thus: "The following property shall be exempt from taxation, and no other," and proceeds to enumerate those things which are to enjoy this privilege.

Article 118 of the constitution of 1868 provides that—

"All property shall be taxed in proportion to its value, to be ascertained as directed by law. The General Assembly shall have power to exempt from taxation property actually used for church, school, or charitable purposes."

The similarity and dissimilarity between the two constitutions on the subject of taxation are apparent. Both proclaim the general rule that all property shall be taxed; both allow certain exemptions. But whereas the constitution of 1879 itself exempts certain property, the constitution of 1868 itself exempts nothing, but permits the General Assembly, if it sees fit, to exempt property actually used for church, school, or charitable purposes (105 U. S., 367). The provisions of the constitution of 1868 as to taxation are certainly not less stringent than are those of the constitution of 1879, and they are not to be evaded under the pretext of extending complainant's charter.

Of course, exemption from taxation cannot be established by inference. The argument of the bank's counsel is an argument *ab inconvenienti*, and confounds the continuance of the corporate existence with the prolongation of the exemption, which are distinct and independent things. The same is true of the argument of the learned circuit judge in his written opinion granting the injunction in No. 108. (See R., p. 285.)

Discussion of the two departments into which the bank is divided is apposite. Complainant's charter had been forfeited under the act of 1842 and the bank was for some years in the possession of managers for the State. At length the stockholders obtained the enactment of act 141 of 1852, authorizing, upon certain conditions, the restoration to them of the bank, with such privileges as it held prior to the forfeiture. The passage of act 246 of 1853, however, became necessary for the purposes of the stockholders. Pursuant to this legislation we now find under only one charter two

departments, each an organized entirety, yet together constituting but one corporation, the bank. These departments were known respectively as the banking or cash stock department and the mortgage stock department. (Pollock *vs.* Citizens' Bank, 12 Louisiana Annual, 228.)

During the years which preceded the civil war the bank prospered. Reverse of fortune followed and the value of property under mortgage to the bank was very seriously diminished. The bank through its banking department made large advances to meet the obligations of the bond debt, which the banking department claims to be due alone by the mortgage department. Act 45 of 1873, which authorized a compulsory annual assessment of not more than $2 per share of the mortgage stock, was ineffectual to afford relief.

The banking department found itself the creditor of the mortgage department in an enormous amount. The situation was most serious, for whatever might be the views of the banking department as to its relations with the mortgage stock department, the bondholders looked to the bank, irrespective of these internal arrangements, and necessarily any action by the bondholders on account of default by the mortgage department would have proven disastrous to the banking department. At about this date there appears to have been due by the mortgage department to the banking department the sum of $682,430.61. The bonds had to be provided for by the bank through its banking department, the active portion of the Citizens' bank. The services of the legislature were resorted to, and hence act 79 of 1880, together with the resulting agreement between the bank and Hope & Co. as mandatory of the bondholders, whereby the bondholders were to look solely to the securities of the mortgage department for the payment of the bond debt. (See the act of compromise between bank and bondholders, p. 34 of R. 108 and p. 94 of R. 483.)

How without foundation, therefore, is the contention that

any contract rights of the bondholders can be affected by the action of these defendants?

If the banking department under the acts of 1852 and 1853 be a new and independent institution, the shares therein and the property thereof are clearly liable to taxation, as these statutes do not purport to confer any exemption. At all events, in view of the agreement between the bank and bondholders, predicated upon act 79 of 1880, what interest have the bondholders in the taxation of the shares in the banking department or as to any assessment against that department?

As regards the mortgage stock, these shares, having long since ceased to be other than a positive detriment to the holders thereof, have, as a matter of fact, no assessable value. The proposed assessments have reference exclusively to the shares of stock in the cash department established under the act of 1853. Under the agreement between the bank and bondholders the latter now look exclusively to the mortgages for the payment of their bonds. This agreement was made and the law authorizing Act 79 of 1880 was passed after the decision in the Bouny case, 32 A., —, and what was said therein in regard to the assessment and collection of taxes on shares of stock is now without any force.

As to the property on which the stock mortgage securities rest—that is, as to the real estate mortgaged to secure the subscription to the original stock—that has always been taxed and is now taxed, and consequently no innovation is sought to be introduced in this respect. So if the bank, in enforcing the collection of any of these mortgage securities, should buy in for its own account the property mortgaged, the bank would, of course, owe the price thereof to the bondholders, who beyond this would have no interest at all in the matter. If, however, the bank should buy in the property for account of the bondholders—that is, Mr. X, Y, or Z, of Amsterdam or elsewhere—it is evident that Mr. X or Y or Z would have to pay taxes on his property thus acquired, as

would any other owner of real estate. No contract rights are affected here.

The only question involved in No. 483 is the exemption from taxation of property acquired by the bank in the foreclosure of its stock mortgages. Without deciding what effect the passage of Act 79 of 1880 had, at the instance of the bank, or the effect of the expiration of the term of the original charter, the supreme court of the State of Louisiana decided that the exemption in section 4 of the act of 1836, which modified and superseded that in Section 30 of the act of 1833, extended only to the capital of the bank, and that its property was never exempt. On the other hand, the learned circuit judge, in No. 108, held that the capital, property, and shares of stock are all exempt. In his opinion (R., p. 285) filed with and referred to in the decree granting the injunction *pendente lite*, he seems to think everything exempt, without differentiating, and the decree for injunction (R., p. 41) covers all three. In his opinion filed with his final judgment, however, (R., p. 293) he recognizes the fact that the act of 1836 modified the exemption of 1833, and since then only the capital has been exempt; but he said the profits and the property acquired in the foreclosure of stock mortgages constituted part of the capital, and that the capital, "so far as it is represented by money, or so far as it is represented by the foreclosures of the stock mortgages which have been received from the stock subscribers in lieu of the money promised by their subscription, or so far as it represents the profits of the bank," was exempt.

The judgment or final decree (R., p. 278), filed and signed the same day, went still further in the interest of the bank and its shareholders, although he had not undertaken to show that they ever were exempt, either under the act of 1833 or the act of 1836. The judgment or final decree from which the appeal was taken enjoins all taxes upon the capital of the bank, upon all property of the bank without exception or qualification, and upon its shares of stock in

the hands of its shareholders. Much of this is not covered even by the ingenious reasoning in the two opinions filed by him. In fact, we understand the final decree to recognize the exemption of 1833 as still in full force.

And in order to reach the conclusions, even in the opinions, the learned judge was compelled to ignore the well-established rule that a law must be so construed as to give effect to each and every part of it. Section 30 of the act of 1833 provided that the bank should "be exempt in its capital and property which it may acquire by virtue of any of the provisions of this act." The bank now owns property in twenty-seven parishes of the State, acquired in the foreclosure of its stock mortgages, and every piece of it was acquired by virtue of the provisions of the act of 1833 and subsequent amendments. In remodeling the exemption, the legislature of 1836 left out the property and exempted only the capital. This change meant something, and effect must be given to this part of the law as well as to any other part. If effect is given to it, the property described in the exemption of 1833, which covers the property in question here, was never exempt under the act of 1836. If it constitutes part of the capital, it was unnecessary to enumerate it in the exemption of 1833 or it was clearly the intention of the law of 1836 to restrict the exemption to the regular cash capital. The opinions and decrees in question do violence to that rule of construction by assuming that the bank's property was inserted in the exemption of 1833 unnecessarily, and studiously left out of that of 1836 without motive or effect; that neither provision had any meaning.

This final decree also enjoins the collection of licenses, although no such issue was presented. The bill did not allege the bank's exemption from the payment of licenses, nor complain of any effort to collect licenses, nor ask for an injunction against such collection. Licenses were not mentioned in the bill, answer, arguments, or opinions of the judge on the two questions submitted to him, first, the issu-

ance, and then the maintenance of the injunction; but the judgment or final decree definitely settles this issue, not involved or presented, by enjoining the collection of licenses. Under the law of Louisiana, the attorney general appoints a lawyer to represent the State assessors and tax-collectors in litigation regarding taxes, but the governor appoints a lawyer to aid the tax-collectors in collecting delinquent State licenses. He is not one of the attorneys in this case and knows nothing about it. Surely that part of the judgment will not be allowed to stand, without any opportunity accorded for a hearing upon that issue.

The judgment also enjoins the collection of the taxes of 1889, 1890, 1891, and 1892, although the proof shows that all the taxes of the first three years have been paid upon the property of the bank, and, in several of the parishes, that even the taxes of 1892 have been paid. The bank owns property in twenty-seven parishes of the State, and has always paid taxes upon its ordinary property without objection. This is shown by the evidence in the record of the assessors, showing that the bank's representative has always given in its property for assessment in their respective parishes, without objection except as to valuation, and by that of the tax-collectors showing the payment of the taxes by the bank. This largely appears also by written evidence, showing proper legal returns made by the bank's representative or land man, and from letters of the cashier to several collectors requesting them to draw on the bank for its taxes.

Complainant's counsel seem satisfied with the testimony of Aubertin, clerk in the mortgage office, showing no taxes assessed in certain districts of New Orleans except certain assessments canceled by order of court; but the evidence of the city treasurer, Schenck, and his abstract clerk, Blackmar, with official abstracts, show that the taxes have been paid in the city as well as in the country parishes. Those canceled assessments doubtless refer to the banking-house,

&c., situated in the district named, and in which the bank owns no ordinary property. The banking-house has been considered by the bank and largely by the officials as part of the capital. Only spasmodic efforts to collect taxes upon the capital, banking-house, and shares of stock have been made and resisted, but this suit is the first opposition made by the bank to the payment of taxes on ordinary property. After this appeal was taken the bank brought a suit in a State court to resist taxes upon ordinary property, from an adverse decision in which, the bank sued out the writ of error in No. 483, now pending in this Court. The opinion of the organ of the State court in that case and the proof in that record, and probably in this, show that the only "property" covered by previous suits was the banking-house and fixtures.

But surely an injunction would not lie against taxes voluntarily paid by the bank, independent of the motive and opinion of the president, not manifested by legal proceedings.

There is an important question presented in the demurrer of the State tax-collectors, to be found on page 87 of the Record, which has been overlooked. The taxes in contemplation in acts of 1833 and 1836, from which the exemptions were granted, were evidently the usual taxes to raise the necessary revenue for the support of the State, parochial, and municipal governments. At that time there was no regular levee system in the State. Since then, by the several acts of the legislature filed in evidence on this branch of the case (R., p. 94), the alluvial portions of the State have been divided into levee districts. A great levee system has been established, affording almost perfect protection from overflow. The fund to accomplish this purpose has been contributed partly by the Federal Government in the improvement of the navigation of the Mississippi river, and a part of it is raised by the setting aside of the proceeds of one mill out of the regular six-mill State tax; but the bulk of

the money is raised by the several levee boards in their respective districts by special assessments upon the property in their districts benefited and improved by the levees built. These assessments are in the shape of *ad valorem* taxes, an acreage tax, and a produce tax. The levee boards have power to levy and do levy a fixed assessment upon every acre of land and mile of railroad protected by the levees built in their districts, a fixed assessment upon each bale of cotton, hogshead of sugar, &c., produced upon those lands, and an *ad valorem* assessment upon all property situated in their respective districts protected and enhanced by the levees.

It is so well settled that citation of authority is unnecessary that these are not taxes the limit of which is fixed by the Constitution, but special assessments or forced contributions levied for the benefit of the property which has to pay them. However much complainant's banking-house may be exempt from taxation, surely it would have to pay for the cost of paving or grading required by municipal regulations, and which enhance or are calculated to enhance the value of the property. These special levee assessments, forced contributions, or taxes are of the same nature. They protect the bank's property directly, and are essential to its full enjoyment. Surely its neighbors do not have to protect its property from overflow, by special contributions over and above the regular taxes fixed by the constitution, while its lands and the produce thereof go free from all special burdens while enjoying all direct benefit resulting from such protection. Such gross inequality and injustice could not have been intended.

Recurring to the act of 1874, we repeat that, aside from the inability of the legislature, under article 118 of the constitution of 1868, to grant or extend the exemption, there is no evidence in the act of any legislative intent to extend the exemption. In addition to the authorities cited in our original brief, which seem to us conclusive of this branch of

the case, it seems to us that such an extension, without specifically renewing the exemption, has no greater dignity than a transfer would have had without special legislative authorization.

In Morgan *vs.* Louisiana, 93 U. S., 217, this Court held that the purchaser of the franchises, &c., of a corporation exempt from taxation did not acquire the exemption, it being a personal favor, not transferable, and no part of the corporate franchises. On page 222 the Court says:

"The language of the statute requires no such construction, and intendments will not be indulged to enlarge the operation of a clause restraining the exercise of a sovereign attribute of a State. As has been often said by this Court, the whole community is interested in retaining the power of taxation undiminished, and has a right to insist that its abandonment shall not be presumed in any case where the deliberate purpose of the State to abandon it does not appear. (Providence Bank *vs.* Billings, 4 Pet., 561; The Delaware Railroad Tax, 18 Wall., 206.)

"Much confusion of thought has arisen in this case and in similar cases from attaching a vague and undefined meaning to the term 'franchises.' It is often used as synonymous with rights, privileges, and immunities, though of a personal and temporary character; so that if any one of these exists it is loosely termed a 'franchise' and is supposed to pass upon the transfer of the franchises of the company. But the term must always be considered in connection with the corporation or property to which it is alleged to appertain. The franchises of a railroad corporation are rights or privileges which are essential to the operations of the corporation and without which its road and works would be of little value, such as the franchise to run cars, to take tolls, to appropriate earth and gravel for the bed of its road or water for its engine, and the like. They are positive rights or privileges, without possession of which the road of the company could not be successfully worked. Immunity from taxation is not one of them. The former may be conveyed to a purchaser of the road as part of the property of the company. The latter is personal and incapable of transfer without express statutory direction."

The authorities cited in support of a strict construction of such acts and the reasons therefor are peculiarly applicable here. The bank prepared the act of 1874, secured its passage, and is responsible for its verbiage. If it intended to claim exemption under it, according to established jurisprudence it was bound to say so in unmistakable terms in the act itself. Inference and implication will not sustain an exemption.

While on the subject of act 40 of 1874, we may as well here call the attention of the Court to another branch of the question. Complainant's bill avers that its exemption was granted and continued upon considerations of public policy, and the recitals of the act of 1874, written by the bank, and for which it alone is responsible, indicate that legislative action was based also upon considerations of public policy. If this is true, and even if it carried an extension of the exemption, the questions herein as to its effect and duration are controlled by the authorities applicable to that class of cases, which are entirely different from that class where the exemption is based upon contractual obligation.

There is no pretense of consideration for the extension of 1874, if the act granted any; and if the State, through the legislature, passed that law through considerations of public policy, the State, through its constitutional convention, had a right to change its public policy. These representative bodies held the chief political power of the people and were certainly competent to mold its public policy. A reading of the constitution of 1879, particularly those parts bearing on the subjects of taxation and corporations, will satisfy any mind that the public policy of the State is changed, and that the supreme will of the State now is that such favors as had theretofore been extended to complainant, particularly as to exemption from taxation and loan of credit, should cease. Therefore such exemption cannot now exist.

This question is exhaustively treated in the opinion of

the supreme court of Louisiana, through Justice Watkins as its organ, in the decision of the case and declining the rehearing in No. 111, the Grand Lodge case, pending now in this Court. We have embodied those opinions in our brief in that case and respectfully ask that they be considered on this subject in this case.

Complainant seems to get a good deal of consolation from certain expressions in the decision of the State supreme court in Bank *vs.* Bouny, 32 A., although its counsel distinctly repudiate that part of the opinion which holds that the exemption of 1833 was superseded by that of 1836. If the parts of that decision which complainant's counsel likes are held to have been good law when the decision was rendered because thereof, of course the part they object to will be held to have been good also. Their citation of this case seems unfortunate for them, because if the exemption of 1833 was modified and superseded by that of 1836, as held in that case, it still has no life, has not had since 1836, and never can have. Independent of the Bouny case, however, we think we have demonstrated that the consideration for the exemption of 1833 failed, and that it was wholly superseded by that of 1836.

On the other hand, we confidently maintain that no part of the decision and no expression in the opinion, original or on rehearing, in the Bouny case can injure us in this. That decision was rendered before the expiration of the original charter, in 1884, before the passage of act 79 of 1880, and before the compromise agreement thereunder between the bank and bondholders, which completely changed the condition then existing on which the decision was based. By securing the passage of the act of 1880 and accepting its conditions the bank waived the exemption it then enjoyed, by the expiration of the term of its charter the exemption of 1833 or 1836, either or both, ceased to exist, and the question as to the power of the legislature to extend it could not have arisen until its term expired.

For these reasons, all that was said in that case about the exemption of the capital and surplus is utterly without force now, since this complete change in the conditions. Nothing that was then said about the want of power to compel the bank to pay the taxes assessed to its shareholders upon their shares of stock, like all other corporations have to do, can have any force now, because since then the agreement has been made between the bank and bondholders under the act of 1880, by which the bondholders have now no right to look to the cash or banking department for the payment of their bonds, and all said on the subject was based on the assumption that they then had the right to do so. Now, surely the rights of the cash shareholders cannot be regulated by the obligations of the mortgage-stock shareholders. That decision can now have no weight against us. 161 U. S., 186.

As the court held in the decision that the assessment had not been made in accordance with the act of the legislature regulating the assessment of the capital, property, and shares of stock of corporations, and as judgment was rendered in favor of the bank on that ground, and not because of any contractual rights of this bank specially, we respectfully submit that it was not necessary to decide either that the bank's capital was exempt or that the bank could not be compelled to pay taxes on the shares of stock for its shareholders, like other corporations, and therefore the opinion is not binding upon these points, for the reasons and on the authorities cited in our original brief.

Complainant also claims that the decision of the State supreme court in Bank *vs.* Assessors, No. 483 in this Court, decided that the bank's capital is exempt. In view of the fact that the court specially refrained from passing upon the effect of act 79 of 1880, as to the exemption, as well as upon the plea of *res judicata*, set up by the bank, it is difficult to see how the bare expressions of the court in refusing the rehearing, to the effect that they left the question of the exemp-

tion of the capital where former decisions had placed it, could have the effect of settling the question. But we respectfully maintain that a positive decision in that case could not have settled the question, because that was not an issue in the case, and any expression on that question is *obiter dictum*. That is a suit to prevent the assessment of the property only, and the capital and shares of stock are not involved in it in any way.

The expressions criticised here, in both the Bouny case and also in 483, are all *obiter dictum*, and therefore have no binding force.

Bouvier defines *obiter dictum* to be "an opinion expressed by a court, but which, not being necessarily involved in the case, lacks the force of adjudication."

Again he says:

"Acording to the more rigid rule, an expression of opinion, however deliberate, upon a question, however fully argued, if not essential to the disposition that was made of the case, may be regarded as a dictum."

And in 16 Howard, 286, it was said:

"If the construction put by the court of a State upon one of its statutes was not a matter of judgment; if it might have been decided either way without affecting any right brought into question, then, according to the principles of the common law, an opinion on such a question is not a decision."

See also Anderson's Dic. of Law and Cooley Const. Lim., 196.

Judged by these authorities, which no one can question, the expressions relied upon by complainant in both of these cases are clearly *obiter*, and therefore can have no effect.

Section 57 of act 106 of 1890, p. 137, provides:

"That in the parish of Orleans there shall be an attorney-at-law to be appointed by the attorney general, whose duty it shall be to aid the tax-collectors in the parish in the collection of all taxes, and to represent the said tax-collectors in all suits for the reduction of assessments; and all taxes and penalties collected through the assistance of said attorney, and in all suits for the reduction of assessments where the party applying for the reduction shall be decreed not entitled to the reduction as claimed by him, either in whole or in part, the delinquent owing the tax and the party applying for the reduction of assessment shall pay a commission to said attorney of ten per cent., calculating same upon the aggregate amount of taxes and penalties so collected and paid over to the tax-collector, and the said attorney's commission shall be paid by the tax-payer and collected by the tax-collector as costs, at the same time that the taxes, interest, and penalties are collected."

Section 56 of the same act, p. 136, provides:

"That the attorney-at-law who represents the tax-collector or tax-collector (assessor?) in all proceedings for the reduction of assessments and collection of taxes (license taxes excepted) and in all injunction proceedings wherein the tax-collector or tax-collectors are sought to be restrained from the collection of taxes shall receive a compensation of ten per cent. on the amount collected, calculating same upon the aggregate amounts of taxes and penalties so collected as the result of aforesaid proceedings. The aforesaid commission to the attorney-at-law shall be paid by the party against whom the judgment is rendered in whole or in part, and shall be collected by the tax-collector as costs at the same time that the taxes and other penalties are collected."

The attorney of the State tax collectors and assessors is acting under the appointment of the attorney general, by virtue of the above provisions, and is entitled to the compensation above provided. We therefore ask that his com-

mission of 10 per cent. upon all taxes and penalties imposed by law be taxed as costs, as claimed in the answers, in the event that judgment is rendered in favor of appellants in 108 and in favor of defendants in error in 483.

Respectfully submitted.

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